

Jury Voir Dire and Trial on Merits

June 5, 2017

REPORTER'S RECORD
VOLUME 2 OF 5 VOLUMES
TRIAL COURT CAUSE NO. CR2016-233
COURT OF APPEALS NO. 01-17-00534-CR

STATE OF TEXAS) IN THE DISTRICT COURT
vs.) COMAL COUNTY, TEXAS
DEREK DALE PORTER) 207TH JUDICIAL DISTRICT

JURY VOIR DIRE AND TRIAL ON MERITS

On the 5th day of June, 2017, the following
proceedings came on to be held in the above-titled and
numbered cause before the Honorable Dibrell W. Waldrip,
Judge Presiding, held in New Braunfels, Comal County,
Texas.

Proceedings reported by computerized stenotype
machine.

APPEARANCES

Counsel for the State of Texas:

Ms. Jacqueline H. Doyer
SBOT NO. 24086703
Ms. Kiera L. Kilday
SBOT NO. 24090854
Comal County District Attorney's Office
150 N. Seguin Street
Suite 307
New Braunfels, Texas 78130
Telephone: 830-221-1300
Fax: 830-620-5599

Counsel for the Defendant:

Mr. James E. Millan
SBOT NO. 24031569
Law Office of James E. Millan PLLC
816 Camaron, Suite 1.15
San Antonio, Texas 78212
Telephone: 210-223-1060
Fax: 210-738-1000

Mr. Edwin Matias
SBOT NO. 13196700
Attorney at Law
8600 Wurzbach Road
Suite 1000
San Antonio, Texas 78240
Telephone: 210-331-3132
Fax: 210-568-4518

CINDY CUMMINGS, CSR

OFFICIAL COURT REPORTER - 433RD DISTRICT COURT
TEL. (830) 221-1279 FAX (830) 608-2030

Jury Voir Dire and Trial on Merits

June 5, 2017

1	VOLUME 2			
2	JURY VOIR DIRE AND TRIAL ON MERITS			
3	June 5, 2017			
4			PAGE	VOL.
4	Panel sworn	.....	5	2
5	Court's Instruction to Prospective Jurors	.....	8	2
6	Motions in limine	.....	46	2
7	General Voir Dire by Ms. Doyer	.....	49	2
8	General Voir Dire by Mr. Millan	.....	130	2
9	Objections to jury panel	.....	169	2
10	Jury seated	.....	170	2
11	Panel released	.....	171	2
12	Indictment read	.....	179	2
13	Defendant enters plea	.....	181	2
14	Opening Statement by Ms. Kilday	.....	181	2
15	Defendant reserves opening	.....	185	2
16	Jury sworn	.....	185	2
17	Rule invoked	.....	186	2
18	GEORGANNE SHIRLEY	Direct	Cross	V.Dire
19	By Ms. Doyer	186 v2		
20	By Mr. Millan		208 v2	
20	By Ms. Doyer	213 v2		
21	JOSEPH LORETT	Direct	Cross	V.Dire
22	By Ms. Kilday	214 v2		
23	By Mr. Millan		216 v2	
24	GABRIEL SEPEDA	Direct	Cross	V.Dire
25	By Ms. Doyer	217 v2		
25	By Mr. Millan		229 v2	

1	Adjournment	238	2
2	Reporter's Certificate	239	2

3

4

ALPHABETICAL INDEX OF WITNESSES

5

Direct Cross V.Dire

6

Lorett, Joseph 214 v2 216 v2

7

Sepeda, Gabriel 217 v2 229 v2

8

**Shirley, Georganne 186 v2 208 v2
 213 v2**

9

10

EXHIBITS OFFERED BY STATE

11

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
----------------	--------------------	----------------	-----------------

12

1	Photograph	196 v2	196 v2
----------	-------------------	---------------	---------------

13

2	Photograph	196 v2	196 v2
----------	-------------------	---------------	---------------

14

3	Photograph	196 v2	196 v2
----------	-------------------	---------------	---------------

15

4	Photograph	196 v2	196 v2
----------	-------------------	---------------	---------------

16

5	Photograph	196 v2	196 v2
----------	-------------------	---------------	---------------

17

6	Photograph	196 v2	196 v2
----------	-------------------	---------------	---------------

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 (Open court, defendant and panel present)

3 THE COURT: Okay. Good morning, ladies
4 and gentlemen. I appreciate you putting up with all of
5 our processes here to make sure that we're able to do
6 this in accordance with the law.

7 At this time, though, I would ask you just
8 to raise your right hand and take an oath issued by the
9 clerk.

10 (Panel sworn)

11 THE COURT: Does anybody feel unable to
12 take that oath or make such an affirmation? Okay. I
13 see nobody. I appreciate it.

14 Ladies and gentlemen, I thank you for
15 responding to that juror card or summons, however you
16 want to refer to it. One of the most important reasons
17 for you to do so is to protect your own rights, the
18 rights of your family members, your friends, your
19 neighbors. Because without having a good cross-section
20 of the community, people willing to respond to that
21 little nasty gram when it hits your mailbox, your own
22 personal rights and those of your friends and
23 neighbors -- your constitutional rights would be nothing
24 more than 200-year-old ink on 200-year-old paper behind
25 about two inches of thick green glass over in

1 Washington, D.C., and nothing more. And so without your
2 willingness to show up where the rubber meets the road
3 to put those rights into action, they would be rather
4 meaningless.

5 Beyond that, I thank you on behalf of all
6 of the ladies and gentlemen in our military that are
7 getting shot at and crapped on and windblown and
8 everything else over across the pond just for us to have
9 the opportunity to walk down the sidewalk, much less
10 come inside of a building such that we can put these
11 rights into action. So on their behalf, I appreciate
12 your presence here today.

13 This jury selection process is part of
14 what we all call due process under our constitution.
15 And that process is intended to be due and fair for all
16 of us, including you as jurors. To make sure that the
17 litigants in this particular case get a fair trial,
18 they're going to have due process as well.

19 But whether it's for you or for the
20 litigants in this trial, due process includes a number
21 of things: Questions by me and then questions by the
22 attorneys and then maybe some more by me. But also,
23 your responses are incredibly important. This is the
24 one time that you have an opportunity to interact with
25 the Court, with the lawyers and -- regarding reasons why

1 or why you may not be good for this or any jury here in
2 Comal County.

3 I will tell you that if you have got some
4 other place you'd rather be this week -- anybody got a
5 place they'd rather be? If you've got some other place
6 you'd rather be, you need to speak up because invariably
7 it's the ones that sit quiet who end up on the jury.

8 It's really not a selection process. We
9 call it jury selection, but nobody gets to pick and
10 choose who they want. Rather, the attorneys end up
11 making strikes against people that they think might be
12 predisposed to the other side. So we're striking people
13 as opposed to picking people.

14 And so if the attorneys haven't heard
15 anything from you all day long, they don't know why they
16 should strike you; right? So if you get my drift, we
17 just -- it's a free flow of discourse of your ideas,
18 your beliefs, your experience that will determine
19 whether or not you get struck, whether or not you get to
20 go fishing this week or whatever else you've got
21 planned.

22 I will tell you as well that there's no
23 question that's intended to annoy or embarrass or harass
24 anybody. And for that reason, I will periodically loop
25 back and say, has anybody thought of anything else? And

1 then nobody will know what we're talking about and you
2 can say, well, Judge, can I approach the bench? And
3 instead of speaking in front of 70 or 80 strangers, we
4 can just huddle amongst seven or eight strangers up here
5 at the bench. We'll give you as much privacy as we
6 possibly can in doing so.

7 My questioning here this morning will have
8 three phases. One are what I nickname the absolutes.
9 They are regarding the legal qualifications, those
10 things that either must or must not apply depending upon
11 the -- how the question is phrased in order for you to
12 be legally qualified to sit on a jury.

13 And so by reason of their legal
14 qualifications, that's why I say that they are
15 absolutes. And so if you believe or have a concern
16 about whether or not any of those apply, I would
17 appreciate your candor in letting us know such that your
18 tax dollars are not wasted. If we got through the
19 middle of a trial and figured out that somebody was not
20 legally qualified to be on a jury, it could cause a
21 problem obviously as you can see.

22 The second phase are what I call the
23 optional ones. They are your options to exercise if you
24 so choose, if they do apply. They are the legal
25 exemptions written by the -- by the legislature that if

1 they apply, you may opt out -- it's your option to do so
2 if you want to opt out of jury service this week.

3 And then the last one are the excuses that
4 you've been thinking of ever since that nasty gram hit
5 your mailbox. I will tell you by reason of the fact
6 that we always have good, civic-minded folks here in
7 Comal County willing to respond, enough people that are
8 able to do so here in Comal County, that we have the
9 ability to defer you to a later panel. I can't just
10 outright excuse you because this is not the best week
11 for you be it at home, at work or something like that.

12 You'll kind of know what the process is.
13 And then I'll ask you -- say, well, if -- if this week
14 is just absolutely impossible for you, you know, what is
15 a good week in the upcoming few months, and then you'll
16 be able to kind of pick that time. You'll know when to
17 expect that that little nasty gram will come back in the
18 mail again. You'll kind of be able to adjust your
19 schedule accordingly for that week.

20 I will tell you -- I say week. This
21 trial, I'm anticipating, is likely to take up the
22 majority of this week. There are times where we have
23 two and three and four -- I have even had a seven-week
24 trial. I mean, that is rather uncommon, about once in
25 11 years. It's not uncommon to have a two or three-week

1 trial. We have at least one of those a year.

2 I cannot project when that will be. If
3 you pick October as being a good month for you, right
4 now I don't know what trial is going to be had in
5 October. It's kind of the roll of the dice, if you
6 think this week is not good for you and you tell me what
7 week you want in the future. I'll leave that up to you
8 to decide.

9 In regard to the absolutes, the legal
10 qualifications, that first phrase that I talked about,
11 you absolutely must be at least 18 years of age or
12 older. You absolutely must be a United States citizen
13 and a resident of the State of Texas and Comal County.

14 As well, you must be qualified to register
15 to vote if you wanted to here in Comal County. You must
16 also be of sound mind and good moral character. You
17 must be able to read and write the English language.

18 And then there are a couple of must nots.
19 You must not have served on a Comal County jury for six
20 straight days in the preceding six months. You must
21 also not have been convicted of theft or any
22 felony-level offense or currently be under a formal
23 legal accusation for theft or a felony offense.

24 Just to go back and loop a couple of those
25 together, is anybody here under the age of 18 or has any

1 issues or concerns regarding their citizenship or
2 residence in the U.S. or residency in Comal County? And
3 that's kind of where do you put your head down at night,
4 where do you call home. Some people have more than one
5 residence, but where is your main home residence. As
6 long as you believe that's here in Comal County, that's
7 fine.

8 Sometimes we have issues with County Line
9 Road. If you live on one side of County Line Road,
10 you're in Comal County. If you live on the other side,
11 you're in Guadalupe.

12 Yes, ma'am?

13 UNIDENTIFIED VENIREPERSON: My permanent
14 residence is in Comal County, but I do not live here.
15 Is that --

16 THE COURT: If you call your permanent
17 residence here, that's fine. A lot of people do travel
18 and work and, you know, maybe live five nights out of
19 the week somewhere else and come home either once a
20 week, once every two weeks or something, but if -- it's
21 a state of mind really, whatever you call home.

22 UNIDENTIFIED VENIREPERSON: Okay.

23 THE COURT: Yes, sir?

24 UNIDENTIFIED VENIREPERSON: My house is
25 closing on Saturday. We're moving out of the county --

1 or excuse me, Friday.

2 THE COURT: I take it as long as you're
3 good today, you're good today. I appreciate it.

4 Anybody else have any issues or concerns?
5 And you see there's no hairy-legged bouncers that drop
6 out of the ceiling to beat anybody about the head or
7 neck for answering. I appreciate everybody's concern
8 and candor about those issues.

9 Anybody have any concerns about their
10 qualifications to register to vote? It doesn't mean
11 that you are registered to vote here in Comal County.
12 As well as your soundness of mind and goodness of moral
13 character, again, that's one of those things I'm going
14 to probably leave up to you. If you've got an issue or
15 concern, please let me know. Otherwise, I'm going to be
16 a rather poor judge of that here in the very short
17 period of time that we have here this morning.

18 And then lastly, just -- well, a couple
19 more, just reading and writing the English language, as
20 long as you can pick up a morning newspaper and figure
21 out the headlines and the captions underneath the
22 photos, that kind of thing, you probably are sufficient.

23 And then anybody that has any concerns
24 about recent jury service, if you've recently served on
25 a Comal County jury, let me know; or as well, if you

1 have a theft conviction or felony conviction or
2 currently under a formal legal accusation of theft or
3 any felony. Any of those anybody have any issues or
4 concerns about? I see none at the moment.

5 Yes, ma'am? You can approach, if you
6 would like. Sometimes the fans in the ceiling between
7 me and you will prevent me from being able to hear you.

8 (At the bench, on the record)

9 THE COURT: Yes, ma'am, how are you doing?

10 VENIREPERSON 146: I had an embezzlement
11 of rental property back in 1989.

12 THE COURT: Okay.

13 VENIREPERSON 146: My husband had moved
14 stuff -- ex-husband had moved stuff out of the state and
15 everything was in my name. I ended up going to court
16 for it.

17 THE COURT: Was it just a civil action or
18 were you charged?

19 VENIREPERSON 146: All I got was -- all we
20 did is -- well, I just paid a fine and that was it. I
21 didn't have to do time or anything like that.

22 THE COURT: No. I appreciate that. I've
23 never heard of that, but --

24 MR. MILLAN: What was the charge?

25 VENIREPERSON 146: Embezzlement of rental

1 property.

2 THE COURT: Was it in Texas?

3 VENIREPERSON 146: No. That was back in
4 1989 when I was married to my ex-husband. Everything
5 was in my name because of my driver's license. So when
6 he moved it out of state, I was in the hospital. I got
7 arrested for embezzlement of rental property because it
8 was in my name.

9 THE COURT: Okay.

10 VENIREPERSON 146: I didn't do time. I
11 didn't do anything like that.

12 MR. MILLAN: You paid a fine?

13 VENIREPERSON 146: Uh-huh.

14 THE COURT: Okay. I mean, I -- there's no
15 way -- I doubt seriously that that's going to come up,
16 but we can look it up.

17 MS. DOYER: Yes, sir.

18 What was your number, ma'am?

19 VENIREPERSON 146: 146, Shawna Jacobs.

20 THE COURT: We'll let you know if there's
21 an issue, but I appreciate your candor.

22 MR. MILLAN: 146, right?

23 VENIREPERSON 146: Yes, Shawna Jacobs.

24 (At the bench, concluded)

25 THE COURT: And also just looping back as

Jury Voir Dire and Trial on Merits

June 5, 2017

1 mentioned and promised, anybody thought of anything out
2 of the absolutes that you have any questions or -- yes,
3 ma'am?

4 VENIREPERSON 173: May I come up?

5 THE COURT: You may.

6 (At the bench, on the record)

7 VENIREPERSON 173: I don't know if it
8 matters, but I have a theft that's from like when I was
9 18 years old. It -- it probably is on my record.

10 THE COURT: Okay. Was it here in Texas?

11 VENIREPERSON 173: Yes.

12 THE COURT: Do you remember what that was?

13 VENIREPERSON 173: It was for Kohl's. I
14 had stole something at Kohl's.

15 THE COURT: Did you get like deferred
16 adjudication?

17 VENIREPERSON 173: I believe that's
18 what -- I'm sorry, I'm 30 now. I don't remember
19 exactly. I remember I had probation.

20 THE COURT: Served some kind of probation?

21 VENIREPERSON 173: Yeah.

22 THE COURT: Was it here in Comal County?

23 VENIREPERSON 173: Yes.

24 THE COURT: Okay.

25 MR. MILLAN: What was your number?

1 VENIREPERSON 173: 173.

2 MS. DOYER: I ran her, Your Honor. It's a
3 deferred.

4 THE COURT: It was a deferred?

5 MS. DOYER: It was.

6 THE COURT: Okay. You're still good.

7 Thank you.

8 MR. MILLAN: She got deferred?

9 THE COURT: Yeah, it was a deferred.

10 (At the bench, concluded)

11 THE COURT: Okay. Again, kind of looping
12 back, anybody kind of -- last opportunity.

13 Then to move from the absolutes into the
14 optional ones. If these do legally apply, you may
15 exercise them. If you are 70 years of age or older and
16 would like to opt out, you may do so. If you're active
17 duty military, deployed beyond Comal County, likewise,
18 you may also opt out. If you're a student in high
19 school or any kind of post-secondary school pursuant, if
20 you're currently enrolled in some -- summer school or
21 any kind of trade school or anything like that, you may
22 opt out.

23 If you have legal custody of a child, that
24 means there's some legal responsibility that you have or
25 a piece of paper, either that or they're born to you and

1 you can't get away from them, a child younger than the
2 age of 12 and your service on a jury would leave that
3 child inadequately tended to sometime during the day,
4 you may also opt out.

5 Likewise, if you're the primary
6 caretaker -- primary caretaker is not defined, so I'll
7 kind of leave that up to you as well. If you're the
8 primary caretaker for somebody, a neighbor, a relative,
9 somebody that's currently infirm, disabled or just has a
10 medical appointment that you need to make sure they get
11 to and those kind of things this week, again, that your
12 service on the jury would leave that person inadequately
13 tended to this week.

14 And then also, if you're a member of the
15 legislature and would like to admit it, you may opt
16 out -- a member of the legislature or work for any
17 office, agency or department affiliated with the
18 legislature. They wrote it; I didn't. I just let you
19 know what the law is.

20 Looping back to grab a few of these at a
21 time, anybody here over the age of 70 or alternatively
22 in the military that would like to opt out? Also,
23 anybody that has -- in high school or any other type of
24 post-secondary school pursuit of any kind? Legal
25 custody of a child younger than 12 and your service --

1 yes, ma'am?

2 VENIREPERSON 228: I do. I have four that
3 I won't have care for for the rest of the week.

4 THE COURT: And your number?

5 VENIREPERSON 228: 228.

6 THE COURT: Let me just double-check. I
7 hate to reduce anybody to a number, but Ms. Silva?

8 VENIREPERSON 228: Yes.

9 THE COURT: Thank you. You may be
10 excused.

11 VENIREPERSON 228: Thank you.

12 VENIREPERSON 105: Sir, I have a question.

13 THE COURT: Yes, ma'am.

14 VENIREPERSON 105: My mother is staying
15 with me. She is just out of the hospital this week. I
16 still work, but I take off and take her to the doctor's
17 appointments.

18 THE COURT: If you're expecting something
19 like that this week potentially or -- I just don't know.
20 I mean, it's up to you.

21 VENIREPERSON 105: I know she has an
22 appointment on Tuesday, but I'm just asking.

23 THE COURT: Well, I mean, if you're
24 planning to take her, I mean, that's -- or need to
25 assist in that, we can certainly excuse you.

1 VENIREPERSON 105: Okay.

2 THE COURT: I mean, it's up to you. Would
3 you like to be excused?

4 VENIREPERSON 105: Yes, sir.

5 THE COURT: Okay. Your number, please,
6 ma'am?

7 VENIREPERSON 105: 105.

8 THE BAILIFF: Okay. Ms. Rosales?

9 VENIREPERSON 105: Yes, sir.

10 THE COURT: Okay. Thank you, ma'am. I
11 appreciate you being here.

12 Yes, sir?

13 VENIREPERSON 224: May I approach?

14 THE COURT: You may.

15 (At the bench, on the record)

16 VENIREPERSON 224: Morning, Your Honor.

17 I'm self-employed and my son-in-law is -- came back from
18 Afghanistan. He's got cancer in his throat and he's off
19 work right now. I'm helping to support them
20 monetarily-wise. He's off work until August for right
21 now.

22 So that's -- and my wife is retired and
23 she's helping watch the grandkids and everything. So I
24 just wanted to --

25 THE COURT: I gotcha. That's probably one

1 of those situations that falls in the gray areas. Can
2 we just defer you until September or something like that
3 and get maybe over this hump?

4 VENIREPERSON 224: Yeah.

5 THE COURT: We want to make this a --

6 VENIREPERSON 224: I understand. I
7 understand, but I just -- at the same time --

8 THE COURT: -- as easy as possible for
9 everyone.

10 VENIREPERSON 224: And at the same time, I
11 just can't really afford to miss work. I'm
12 self-employed.

13 THE COURT: Well, I can't just excuse
14 somebody for that. But for the moment, I understand the
15 circumstance and the situation and we want to try to
16 ease that as best possible. Is September, October, one
17 of those months, okay?

18 VENIREPERSON 224: September, yeah.

19 THE COURT: That's fine. We'll just send
20 you that card again. Your number, please, sir?

21 VENIREPERSON 224: 224, Gerald McKinnon.

22 THE COURT: Thank you, sir.

23 VENIREPERSON 224: Thank you, sir. God
24 bless you.

25 THE COURT: Yes, sir.

1 (At the bench, concluded)

2 THE COURT: Anybody else -- yes, sir?

3 VENIREPERSON 163: Approach?

4 THE COURT: Yes, sir, you may.

5 (At the bench, on the record)

6 THE COURT: Good morning.

7 VENIREPERSON 163: Good morning. Mine is
8 I have appointments this week and next week for doctors
9 at the VA that I've tried for four years and I finally
10 got. I don't want to have to cancel.

11 THE COURT: No, sir.

12 VENIREPERSON 163: I'm free until the end
13 of the month.

14 THE COURT: We'll be glad to send you a
15 card and just defer you to that time if you would like
16 to come back.

17 VENIREPERSON 163: Yes, I would.

18 THE COURT: Your number, please, sir?

19 VENIREPERSON 163: 163.

20 THE COURT: Is July okay or August?

21 VENIREPERSON 163: The tail end of June
22 here, the last two weeks, or July.

23 THE COURT: Okay, sir. They'll send you
24 another card again. Appreciate it. That's Mr. Slings?

25 VENIREPERSON 163: Yes.

1 THE COURT: Thank you, sir. Good luck
2 with those appointments.

3 MR. MILLAN: Thank you, sir.

4 (At the bench, concluded)

5 THE COURT: All right. As well, I -- just
6 continuing on with those optional ones, anybody else
7 have, you know, primary caretaker-type concerns
8 regarding somebody in your family or a neighbor or
9 somebody that you need to take care of? Okay. I see --

10 THE BAILIFF: We've got one, Judge.

11 THE COURT: Okay.

12 THE BAILIFF: It's medical.

13 THE COURT: Okay.

14 (At the bench, on the record)

15 VENIREPERSON 178: I have anxiety and I
16 have trouble in closed areas, so I'm just -- I'm trying
17 hard sitting by the door just so you know.

18 THE COURT: Very good. If you think that
19 that would prevent you from being able to concentrate on
20 evidence and stuff, I can give you a medical deferment.
21 And if you would like, they can send you a permanent one
22 so that we don't call you back at least -- I think they
23 last for a year or something like that.

24 VENIREPERSON 178: That would be
25 wonderful.

1 THE COURT: And your number, please,
2 ma'am?

3 MR. MILLAN: Ms. Hensley, 178.

4 VENIREPERSON 178: Yes.

5 THE COURT: Okay. Thank you, ma'am.
6 Appreciate it.

7 (At the bench, concluded)

8 THE COURT: Any other of the optional ones
9 regarding over the age of 70 or military or if you are a
10 student in high school or have legal custody of a child
11 or otherwise primary caretaker for anyone of any age
12 that your service would leave that person inadequately
13 tended to; or alternatively, if you're a member of the
14 legislature?

15 All right. Other than that -- just kind
16 of by a show of hands will help us figure out how much
17 time for the most part that we're going to need. If
18 there's other excuses or anything, again looping back as
19 promised, whether it's the absolutes, the optionals or
20 just a scheduling issue for this week that you have
21 something, just by a show of hands how many people might
22 I need to speak with? It's usually about a dozen.

23 And so what we'll do -- and then we'll
24 clean up the list, and we've excused some or deferred
25 some. We'll try to consolidate and make the seating

1 arrangements maybe a little bit better and -- and maybe,
2 maybe not. Sometimes we shuffle the cards, so to speak,
3 to get everybody in a completely even more randomized
4 order. I don't know if that will happen.

5 But if you will, just remain in your seats
6 if you need to speak with me about anything that we've
7 talked about this morning or just scheduling this week
8 and -- and maybe resetting you to a more convenient time
9 for -- whether it's personal, work or otherwise, just
10 remain in your seats. Otherwise, I'll give everybody
11 just about a 15-minute break.

12 And according to that clock at the back of
13 the courtroom, that will be five until 10:00 and then
14 we'll call everybody in here reseated and get started
15 with the attorneys. If you need to speak with me about
16 anything so far this morning, just remain in your seats.

17 (Panel leaves the courtroom)

18 THE COURT: I'll kind of work my way back.
19 Usually I'll start on the left-hand side of the room,
20 but you may either speak from your seats or come forward
21 at your discretion.

22 Yes, ma'am?

23 VENIREPERSON 2: So I live in Austin and I
24 don't have transportation. My permanent address is
25 still with my parents because I'm a student and I leave

1 for medical school in a month to Virginia.

2 THE COURT: Okay. Very good.

3 VENIREPERSON 2: I wouldn't have a way to
4 get here this week is my only thing. I borrowed my
5 father's car today.

6 THE COURT: Let me just speak with counsel
7 and we'll let you know, but -- I mean, I -- there's
8 really probably no point in deferring you to a later
9 panel if you're getting ready to move to Virginia.
10 Congratulations, by the way, on that.

11 VENIREPERSON 2: Thank you.

12 THE COURT: Also, we obviously we need
13 people to be able to get here.

14 VENIREPERSON 2: Absolutely.

15 THE COURT: I don't know if that would be
16 an option for the rest of the week to stay here with
17 your -- I don't know.

18 VENIREPERSON 2: Okay.

19 THE COURT: Sometimes if somebody lives,
20 you know, within 15 or 20 miles or something, we can --
21 if somebody ends up on a jury, we can try to arrange
22 some transportation in the front seat of a patrol car or
23 something.

24 VENIREPERSON 2: Right.

25 THE COURT: But anyway, let me just talk

1 with counsel and I'll let you know.

2 VENIREPERSON 2: Do you want me to wait in
3 the hall or back in my seat?

4 THE COURT: You can just sit down and
5 we'll probably come up with a solution here in just a
6 second.

7 If y'all can kind of get close, anybody
8 object to me cutting her loose?

9 MR. MILLAN: I don't object.

10 MS. DOYER: I don't object, but I see a
11 lot of people sitting out there.

12 THE COURT: I won't probably announce it
13 right now, but --

14 MS. DOYER: Okay.

15 THE COURT: Okay. We'll probably -- I
16 forget, what was her number?

17 MS. DOYER: Number 2.

18 THE COURT: She's number 2. That's Kristi
19 Cowsar.

20 MR. MILLAN: This is the first week out of
21 school. I mean, I can tell you right now my wife was
22 expecting me to be doing stuff at home.

23 THE COURT: Okay.

24 MR. MILLAN: I'm sure a lot of people have
25 things that they want to do this week.

1 THE COURT: And just -- next? Anybody
2 else? And again, you can come up here if you would like
3 to.

4 VENIREPERSON 34: Hi. I work for a large
5 telecommunication company. Last week we were told that
6 we needed to come up with a list of layoffs. I have to
7 make mine due by Friday. This is the like the worst
8 week for me. Can I defer?

9 THE COURT: Sure. Your name?

10 VENIREPERSON 34: Kutac, number 34.

11 THE COURT: Okay. Is there a month that
12 you think would be better for you?

13 VENIREPERSON 34: August would be
14 better -- beginning of August or the end of July.

15 THE COURT: Okay, sir. Thank you. We'll
16 defer you until then.

17 MR. MILLAN: Thank you.

18 THE COURT: Yes, ma'am?

19 VENIREPERSON 17: Morning. I have a
20 medical condition that actually keeps me from sitting
21 for long periods of time, so I don't know -- I don't
22 think --

23 THE COURT: Number one, I will leave it up
24 to you. I'll certainly grant you a medical exemption,
25 if you would like. You may stand at any time, if you

1 would like. In other words, I don't want to prevent you
2 from serving, but I'll give you the option. Even if you
3 end up on the jury, people do -- I mean, sometimes we
4 have folks that just need to stand. They can certainly
5 just step out of the box and just stand if they would
6 like, but it's purely up to you.

7 VENIREPERSON 17: Okay.

8 THE COURT: If you would prefer just to
9 maybe at the moment be -- have a medical exemption --

10 VENIREPERSON 17: Let's do it this one
11 time.

12 THE COURT: We'll see where we go from
13 there.

14 VENIREPERSON 17: Yeah.

15 THE COURT: Okay. Your number?

16 VENIREPERSON 17: 17.

17 THE COURT: Ms. Martin?

18 VENIREPERSON 17: Yes.

19 THE COURT: Thank you, ma'am. Appreciate
20 you being here.

21 Just again kind of working my way back on
22 the left, if you need to speak with me.

23 VENIREPERSON 59: Good morning.

24 THE COURT: How are you doing, sir?

25 VENIREPERSON 59: Point of concern. I

Jury Voir Dire and Trial on Merits

June 5, 2017

1 have a situation called narcolepsy. I'm under
2 medication for it. And if I'm sitting for -- I fall
3 asleep and I -- and I really have no control. I have
4 transportation issues because of it and we live out in
5 Canyon Lake.

6 THE COURT: All right, sir.

7 VENIREPERSON 59: So I just don't know if
8 I'm going to be able to be here.

9 THE COURT: Your number, please, sir?

10 VENIREPERSON 59: 59.

11 THE COURT: 59. Mr. Gum?

12 VENIREPERSON 59: Yes, sir.

13 THE COURT: All right. We can do a
14 medical exemption and -- if you would like. The clerk's
15 office can send you a card.

16 VENIREPERSON 59: That would be fine.

17 THE COURT: It will last for a year.

18 VENIREPERSON 59: I prefer that. Thank
19 you.

20 THE COURT: Okay. Thank you. Appreciate
21 it.

22 How are you doing today?

23 VENIREPERSON 56: I am flying out Friday
24 for my granddaughter's christening. I don't mind -- I
25 love to serve. I've been on a jury, but I can't -- I'm

1 flying out Friday, so if it -- you said it's most of the
2 week?

3 THE COURT: Yeah. And then what happens
4 is I can't ever tell how long a jury might deliberate.

5 VENIREPERSON 56: And I brought the --

6 THE COURT: We'll just defer you. Is
7 there a month coming up that's better?

8 VENIREPERSON 56: Yes, sir, August or
9 September.

10 THE COURT: And your number, please,
11 ma'am?

12 VENIREPERSON 56: 56.

13 THE COURT: Ms. Tasler?

14 VENIREPERSON 56: Yes, sir.

15 THE COURT: Appreciate it. Y'all have a
16 great time.

17 Yes, ma'am?

18 VENIREPERSON 66: I'm scheduled to leave
19 out of the country for a trip on Sunday. I'm more than
20 willing to serve. But not knowing how long this could
21 possibly go, is there any way to defer?

22 THE COURT: Well, I mean, let me
23 double-check with counsel. I imagine we'll be done.

24 MR. MILLAN: I can't imagine it's going
25 into next week.

1 VENIREPERSON 66: That will be fine. As
2 long as there's a pretty good chance that it won't go
3 past this week, then I'm willing to stay, so --

4 THE COURT: Okay. Thank you.

5 MR. MILLAN: What was your number?

6 VENIREPERSON 66: 66.

7 THE COURT: Yes, sir?

8 VENIREPERSON 113: Judge, I'm dealing with
9 some medical issues right now. I've been doing physical
10 therapy. I broke my neck. It's an old injury, but I've
11 got a lot of arthritis. I don't sleep well. I take a
12 lot of drugs and muscle relaxers. It's really hard for
13 me to sit for a long period of time.

14 THE COURT: Sure. I will leave that up to
15 you. I've told a couple of people actually here this
16 morning if you want to, you can certainly -- while
17 you're back there, you can stand up. If you do by
18 chance end up on the jury, you're also free to, you
19 know, stand up, if you would like. But alternatively,
20 you know your situation better than I. If this is just
21 not the right time, then --

22 VENIREPERSON 113: It's definitely not a
23 good time.

24 THE COURT: All right.

25 VENIREPERSON 113: I appreciate your

1 consideration.

2 THE COURT: Your number, please, sir?

3 VENIREPERSON 113: 113.

4 THE COURT: And we'll just grant you a
5 medical exemption. Thank you, sir.

6 VENIREPERSON 113: I appreciate it. Thank
7 you very much, sir.

8 MR. MILLAN: 113:

9 THE COURT: Yes, sir?

10 VENIREPERSON 111: Good morning,
11 Your Honor. I don't want to defer, but I'm retired
12 military. I work as a contractor for DoD. I leave
13 Saturday for Tucson. And if I could defer, I mean, I --
14 I would be good with that. I just want to let you know,
15 but I average two weeks -- every month I go do training
16 exercises with these guys, though. What happens if I
17 have to leave Saturday?

18 THE COURT: I'm told that -- I don't know
19 anything about the case, but I -- I think they're saying
20 they're going to be done midweek sometime. I don't
21 think we're going to push into --

22 VENIREPERSON 111: Then I'm fine with
23 serving. I don't want to take the gamble of coming back
24 up and I'm already gone.

25 MR. MILLAN: I'm sorry, what's your

1 number, sir?

2 VENIREPERSON 111: 111.

3 THE COURT: Thank you.

4 Yes, sir?

5 VENIREPERSON 102: Hi. Just this week I
6 have two night shifts coming up on Wednesday and
7 Thursday. Then I'm on back-up call all day Friday.

8 THE COURT: What type of work is it?

9 VENIREPERSON 102: I'm an ER physician at
10 Resolute Hospital. I'm happy to reschedule another
11 week, another month, but this week is difficult.

12 THE COURT: And I think these cards go out
13 about three weeks in advance or something like that. So
14 now you kind of know what the drill is. And if there's
15 just a way that you can help ensure --

16 VENIREPERSON 102: Our schedule is made
17 out all the way to October right now. We don't have the
18 staff here right now, but --

19 THE COURT: Okay. I don't know if the --
20 I always let people defer at least -- maybe one time.
21 But just so you kind of know what the situation is --
22 and once you get that card, if there's a way to alter
23 the schedule even though it's already made such that
24 just, you know, the week could be kind of freed up a
25 little bit.

1 VENIREPERSON 102: I would work nights.
2 Like I'm coming off post-night shift right now. I can
3 come during the day and just shift my nights. I just
4 worked last night from seven to seven. And if you want
5 me on the jury, I'll work after that, but --

6 THE COURT: Okay. Well, I appreciate it.
7 But my point is if you would rather defer this time,
8 that's fine, just so you know what the drill is.

9 VENIREPERSON 102: Okay.

10 THE COURT: I mean, you know your
11 situation more than -- or better than I do.

12 VENIREPERSON 102: If I can defer for
13 another week or something.

14 THE COURT: Okay. It would probably be a
15 month or two.

16 VENIREPERSON 102: Okay. That's fine.

17 THE COURT: Your number, please, sir?

18 VENIREPERSON 102: 102.

19 THE COURT: Mr. del los Santos?

20 VENIREPERSON 102: Yes, sir.

21 THE COURT: Thank you, sir. Appreciate
22 it. We'll defer you.

23 Yes, sir?

24 VENIREPERSON 171: I'm working nights in
25 Austin, Texas. I don't know if it would be better -- it

1 makes for kind of a long day if I've --

2 THE COURT: What type of work do you do?

3 VENIREPERSON 171: I work at Tri-Pak

4 Marine. We manage the terminals in L.A. So it's from
5 7:00 at night to 5:00 a.m.

6 THE COURT: I take it -- how do you manage
7 the -- from Austin?

8 VENIREPERSON 171: We have a centralized
9 system. It's all automated terminals, so --

10 THE COURT: Okay. Very good. I'll be
11 glad to defer you. I'm giving everybody just one time.

12 VENIREPERSON 171: Yeah, that's what I'm
13 thinking.

14 THE COURT: And then you'll know -- once
15 you get that card back in the mail again --

16 VENIREPERSON 171: Okay.

17 THE COURT: -- you'll kind of know what
18 the drill is. And if there's a way to just kind of keep
19 that schedule freed up.

20 VENIREPERSON 171: See, I don't think I'm
21 going to be on day shift any time soon, so I might as
22 well get it over with now.

23 THE COURT: Yeah, you're not on the jury
24 yet, so you might as well stay with us.

25 MR. MILLAN: What's your number?

1 VENIREPERSON 171: 171.

2 THE COURT: Okay. Thank you.

3 Yes, ma'am?

4 VENIREPERSON 166: Yes, sir. I know you
5 said 12 and under, but I have a 14-year-old girl and
6 she's in camps all week. I'm the only one that stays
7 home with them. I don't know if that makes a
8 difference, you know, like to drop her off and -- they
9 start at 8:00 in the morning and they need to get picked
10 up like at 11:30. I don't really depend on anybody else
11 to pick up my kids.

12 THE COURT: Okay. So just this week is
13 not good or --

14 VENIREPERSON 166: Well --

15 THE COURT: I mean, if we defer you to a
16 later panel, when would be a good time?

17 VENIREPERSON 166: That's just it. She's
18 in camps all summer.

19 THE COURT: Through September?

20 VENIREPERSON 166: When they're in school
21 is probably a better time for me. When they're in
22 school, that's better for me. But I can still -- I can
23 stay and wait because I have somebody picking her up
24 today because I don't know like you said, if I'm going
25 to --

1 THE COURT: You may not be on the jury.
2 VENIREPERSON 166: I can wait. I guess I
3 can --

4 THE COURT: But I mean --

5 VENIREPERSON 166: Oh, yeah.

6 THE COURT: -- if you end up on the
7 jury --

8 VENIREPERSON 166: Okay. Right. Yikes.

9 THE COURT: We can defer you.

10 VENIREPERSON 166: I just -- you know, I
11 just -- I never depend on anybody to pick up my kids.

12 THE COURT: I gotcha. Why don't we just
13 defer you until September?

14 VENIREPERSON 166: That would be fine.

15 THE COURT: Your number, please, ma'am?

16 VENIREPERSON 166: 166. It's better when
17 they're in school -- when she's in school.

18 THE COURT: Ms. Silva?

19 VENIREPERSON 166: Yes, sir.

20 THE COURT: Okay. Thank you, ma'am.

21 VENIREPERSON 166: Thank you.

22 THE COURT: We'll send you that card
23 again.

24 Okay. And over on the right-hand side?

25 VENIREPERSON 195: Good morning. Just a

1 hardship question this morning.

2 THE COURT: Yes, sir.

3 VENIREPERSON 195: I'm a federal
4 contractor paid by the hour. Of course, a week is going
5 to hurt. I just wanted to know if there's any kind of
6 exemption for that.

7 THE COURT: No. There's -- there's not.
8 Again, you're not on the jury yet. There may be
9 something that you say that would cause people to strike
10 you. I don't know.

11 MR. MILLAN: The other question is, is
12 there anything special about this particular week that's
13 any different?

14 VENIREPERSON 195: No.

15 THE COURT: It's just the same thing every
16 week?

17 VENIREPERSON 195: I've been doing it for
18 seven years. I just wanted to ask.

19 MR. MILLAN: Your number, sir?

20 VENIREPERSON 195: 195.

21 THE COURT: Okay. We'll see you in a
22 little bit.

23 Yes, ma'am? Hi. How are you doing?

24 VENIREPERSON 213: I would probably rather
25 be here. I have a colonoscopy scheduled on Wednesday.

Jury Voir Dire and Trial on Merits

June 5, 2017

1 THE COURT: All right. We can probably
2 reschedule you --

3 VENIREPERSON 213: Okay.

4 THE COURT: -- here a lot easier.

5 VENIREPERSON 213: Yeah.

6 THE COURT: What's your number?

7 VENIREPERSON 213: 213.

8 THE COURT: Ms. Johnson?

9 VENIREPERSON 213: Yes, sir.

10 THE COURT: Okay. Thank you, ma'am.

11 VENIREPERSON 213: September is good.

12 THE COURT: Okay. We'll send you that
13 card.

14 Yes, ma'am?

15 VENIREPERSON 227: I have three days of
16 staff development this week for school. Can I defer it
17 until the end of September?

18 THE COURT: Sure. That would be good.
19 Your number, please, ma'am?

20 VENIREPERSON 227: 227.

21 THE COURT: Ms. Hanson?

22 VENIREPERSON 227: Yes, sir.

23 THE COURT: Thank you. We'll defer you
24 until September.

25 VENIREPERSON 227: Okay. Perfect. Thank

1 you.

2 THE COURT: Good morning. How are you
3 doing?

4 VENIREPERSON 236: I'm a sponsor at the
5 Sunshine Kids event Wednesday morning at 8:00.

6 THE COURT: Is that a --

7 VENIREPERSON 236: It's cancer kids. We
8 run them up to Austin.

9 THE COURT: Well, we thank you for your
10 effort in that regard. Your number, please, ma'am?

11 VENIREPERSON 236: 236.

12 THE COURT: Ms. Dash?

13 VENIREPERSON 236: Yes.

14 THE COURT: You think September would be a
15 good --

16 VENIREPERSON 236: That would be
17 wonderful.

18 THE COURT: Thank you, ma'am.

19 Good morning. How are you doing?

20 VENIREPERSON 242: Morning. Good. I've
21 been chosen as a trainer for my campus for Seele to do
22 this -- we've got a new behavior initiative in the
23 district. I'm supposed to attend my training on
24 Wednesday and Thursday and Monday.

25 THE COURT: Okay. Why don't we reschedule

1 you. Would you prefer to come back before school starts
2 or --

3 VENIREPERSON 242: Not really, because
4 I've also got a 15-year-old who swims twice a day and
5 I've got to get her to her swimming.

6 THE COURT: Is September better then?

7 VENIREPERSON 242: September, October.

8 THE COURT: And your number, please,
9 ma'am?

10 VENIREPERSON 242: 242.

11 THE COURT: Dana Williams?

12 VENIREPERSON 242: Yes.

13 THE COURT: Thank you. We'll defer you
14 until the fall.

15 VENIREPERSON 242: Okay. Thank you.

16 THE COURT: Yes, sir?

17 VENIREPERSON 77: James Gallaher, juror
18 number 77. I am in charge of the church alone this
19 week. My dad, Dennis Gallaher, and my mom had to go to
20 M.D. Anderson for the next eight weeks for radiation.
21 I've got the next eight weeks along with that.

22 My wife is a schoolteacher and is in
23 conferences all week this week. That leaves my nine and
24 ten-year-old at home by themselves.

25 THE COURT: Technically speaking, I guess,

1 under that circumstance, you would be entitled to a
2 child care exemption.

3 VENIREPERSON 77: That I can get taken
4 care of if I need to, so --

5 THE COURT: If just right now the next
6 couple of months is not good, we can just defer you
7 until September or so.

8 VENIREPERSON 77: No. I'll tell you what,
9 if July -- I can make July work, no problem.

10 THE COURT: Okay.

11 VENIREPERSON 77: Yeah, as long as it's
12 the -- I think she has radiation through the second week
13 of July.

14 THE COURT: Okay. Just the latter part of
15 July?

16 VENIREPERSON 77: Yes, sir, the latter
17 part of July and maybe even the -- I think the beginning
18 part of August would work as well.

19 THE COURT: Okay. We'll defer you
20 until -- until then.

21 VENIREPERSON 77: Great. I appreciate it.
22 Thank you, Judge.

23 MR. MILLAN: 77?

24 THE COURT: Yes.

25 Yes, sir?

1 VENIREPERSON 294: My son is graduating
2 from basic training this week, Thursday and Friday, and
3 my wife and I had taken off time. He's going to then go
4 immediately to tech school and be deployed. It may be
5 years before I see him again. It just so happens it
6 would be the same week that this happens. I would love
7 to be deferred, if at all possible.

8 THE COURT: And your number please, sir.

9 VENIREPERSON 294: 294.

10 THE COURT: Mr. Collins?

11 VENIREPERSON 294: Yes, sir.

12 THE COURT: All right. Thank you. I
13 appreciate your son's service.

14 VENIREPERSON 294: Thank you, sir.

15 THE COURT: Is there a month in particular
16 that you think is better for you?

17 VENIREPERSON 294: Actually September. I
18 texted my wife. She has some trips planned and we have
19 elderly people that we take care of, so September would
20 be perfect.

21 THE COURT: All right. Thank you.

22 James, is he going to the judge or jury?

23 MS. DOYER: He just told me they're going
24 to the judge.

25 THE COURT: Okay. So that might make

1 things a little simpler.

2 James, we've got 54 people with us. I was
3 thinking of keeping this lady so far, but do you mind --
4 I don't know what the issues are.

5 MR. MILLAN: I mean, we're going to you
6 for punishment, Judge. Those are usually the big
7 issues.

8 THE COURT: Okay. So I'll let her go, if
9 you're okay with that.

10 MR. MILLAN: Okay. What number was she?

11 THE COURT: 2.

12 Ms. Cowsar, I believe we're going to be
13 able to make things work without keeping you here, so --
14 but I appreciate you being here today.

15 VENIREPERSON 2: Okay.

16 THE COURT: Thank you.

17 VENIREPERSON 2: Thank you.

18 MS. DOYER: Your Honor, we ran that
19 criminal history on Ms. Jacobs. There is nothing that
20 shows up on her criminal history, so I think she's good
21 to go.

22 THE COURT: I have no way of knowing what
23 embezzlement of rental property is considered.

24 MS. DOYER: She has no record at all.

25 THE COURT: Yeah.

1 MS. DOYER: There's one, a Jeffrey
2 Henslee, he's number 215. It looks like we filed
3 charges out of Comal County on a felony tampering with a
4 governmental record. I just want to see what happened
5 to that.

6 THE COURT: Okay. You think it's --
7 there's an indictment pending or --

8 MS. DOYER: Well, I don't know. It
9 doesn't have the disposition information. It just shows
10 that charges were filed. I was going to go look in
11 Odyssey real quick and see if it's been dismissed.

12 THE CLERK: Is it in this county?

13 MS. DOYER: Yes, ma'am.

14 THE COURT: Are you anticipating a
15 shuffle?

16 MR. MILLAN: No.

17 THE COURT: Okay. So we'll just fill in
18 the gaps and go ahead and start calling them in. It
19 won't take us too long, if you can just tell -- like
20 when you say next door, are you talking about Judge
21 Boyer?

22 MS. DOYER: Yeah. I've got a 90-day writ
23 that I just wanted to make sure we got taken care of and
24 another one that was supposed to get reset.

25 (Recess taken)

1 (Open court, defendant present, no panel)

2 MS. DOYER: I filed a motion in limine, if
3 we could do that before voir dire -- he has it -- and a
4 motion for fingerprints because he's not going to
5 stipulate to the priors. I can send Ronnie over there
6 to print him at the jail.

7 THE COURT: Is that a jurisdictional or a
8 punishment issue?

9 MS. DOYER: It will end up being both.
10 But for the purposes this trial right now that we're
11 about to do, jurisdictional.

12 THE COURT: Okay. We could probably do
13 that -- is he incarcerated? He's incarcerated. They
14 could probably do it during lunch, but I'll sign off on
15 that.

16 As far as the motions in limine, what are
17 we dealing with that we might not be able to agree with
18 for the purposes of voir dire?

19 MS. DOYER: Generally, it says impeachment
20 with specific instances of conduct.

21 The victim is currently incarcerated.
22 She's currently incarcerated on charges out of Hays
23 County. It happened maybe two weeks ago. So any
24 mention or allusion to those charges and any impeachment
25 with drug abuse or anything like that would be improper.

1 So I didn't want any of that being waived in front of
2 the jury in voir dire.

3 MR. MILLAN: If I feel that the door is
4 opened to it, I can approach and we can take it up
5 outside their presence.

6 THE COURT: Okay. Obviously, we're just
7 talking about for voir dire at the moment.

8 MR. MILLAN: Oh, yeah. I don't anticipate
9 any voir dire issues on it.

10 THE COURT: Okay.

11 MS. DOYER: Okay.

12 THE COURT: But then -- just even beyond
13 voir dire, just -- just if you think for some reason you
14 need to go into -- the during cross-examination of the
15 victim, if you think you're going to need to impeach --

16 MR. MILLAN: Who do you plan on calling
17 today?

18 MS. DOYER: The victim. I was going to
19 start with her.

20 THE COURT: Okay. Maybe we'll have time
21 to get more specific about it. But just impeachment
22 issues, I guess just bring it to our attention before
23 you go into it.

24 MR. MILLAN: I will.

25 MS. DOYER: If we could just have a

1 hearing outside the presence of the jury.

2 THE COURT: Okay.

3 (Off the record, hearing another matter)

4 (Open court, defendant and panel present)

5 THE COURT: Ladies and gentlemen, I do
6 apologize, but there was a matter of constitutional
7 importance that I needed to take up, otherwise I would
8 not have kept you out there cooling your heels. It's a
9 matter that I just needed to take up.

10 At this time the attorneys are getting
11 ready to explore certain matters to determine whether
12 it's appropriate for you to sit on this particular jury
13 from their point of view. They're seeking just
14 information regarding your experiences, your training,
15 your beliefs, et cetera.

16 They're not allowed to go into the facts
17 of this case and -- and this is not the time in which
18 there would be objections regarding evidence, et cetera.
19 They may make other objections, but they're not allowed
20 to go into the evidence at this time.

21 And again, they're not trying to embarrass
22 or annoy anybody. If you need to answer a question, if
23 you'll just say, I would like to approach at a later
24 time, tell the attorneys, they'll make a note of it.
25 And to the extent that we ultimately need to do that,

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 we'll call you up here at a later time to answer that
2 question with as much privacy as we possibly can afford
3 you.

4 But beyond that, again please speak up. A
5 lot many times what one person may have to say may clue
6 another potential juror in or create a thought that's
7 relevant and needs to be expressed. If you make sure
8 just everybody in the courtroom can hear you, it would
9 be beneficial.

10 As well in doing so, if you can just show
11 my court reporter, Cindy Cummings, that -- the large
12 side of the number on your little card, that will help
13 her at a later time because we have deferred a few
14 people, excused a few people and so the numbers are
15 consolidated.

16 Your original juror number is somewhat
17 meaningless at this time. If you'll just refer to that
18 card that you have kind of as a seat number, it will be
19 beneficial. And the attorneys may also just as a
20 verification process double-check your name as well.

21 Ms. Doyer, if you're ready.

22 MS. DOYER: Yes, Your Honor.

23 THE COURT: You may proceed.

24 JURY VOIR DIRE

25 MS. DOYER: May it please the Court,

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 opposing counsel.

2 Ladies and gentlemen of the jury panel,
3 good morning. My name is Jackie Doyer. I am an
4 assistant district attorney here with the Comal County
5 District Attorney's Office. Our office handles a
6 variety of matters.

7 In civil matters we represent The
8 Department of Family & Protective Services. In criminal
9 matters we represent the State of Texas in everything
10 from a Class C traffic ticket up to and including
11 capital felonies. I work in the felony division. You
12 are here in a district court, so we will be trying a
13 felony-level jury trial this week.

14 Now, in order to try a felony jury, we
15 first need to get a jury. And so everybody that's out
16 here is called -- what we will call the venire or the
17 panel, kind of the general panel. Once you make the
18 jury, your name and your role change, but we'll get into
19 that a little bit more.

20 My name is Jackie Doyer. My trial partner
21 this week is standing here. Her name is Kiera Kilday.
22 We have an intern here from the University of Texas
23 School of Law. Her name is Samantha Whitehead. They're
24 going to assist me today by taking notes of pretty much
25 everything that is being said. Despite what I tell my

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 husband, I cannot do two things at once so I need their
2 help.

3 That brings me to my next introduction.
4 Ms. Cumming here, this young lady, is our court
5 reporter. She's creating a record of all of the
6 proceedings that take place. So in order for her -- my
7 assistants' notes to be useful to us and for the record
8 to be useful, it's important to identify everybody by
9 name or juror number or that seat number that you have
10 in front of you so we can track back who said what.

11 In addition to that, we're used to talking
12 in common, everyday conversations using body language.
13 We'll nod our head for yes or shake our head for no.
14 Unfortunately, that can't be taken down on a record. So
15 I'll have to ask you, can you answer audibly for me or
16 can you answer that out loud because that's how we'll
17 take it down. Does that make sense to everybody?

18 I'm waiting for the PowerPoint here.
19 While they're getting that going -- before I start into
20 some of the legal issues, I noticed a couple of people
21 had some criminal jury service and so I wanted to ask
22 about that.

23 So I see -- is it Ms. Sheffield here in
24 seat number 3?

25 VENIREPERSON 3: Yes.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Yes, ma'am. I saw that you
2 had criminal jury service you listed on your card. Was
3 that here in Comal County?

4 VENIREPERSON 3: Yes, ma'am.

5 MS. DOYER: And were you able to reach a
6 verdict in that that case?

7 VENIREPERSON 3: I got disqualified.

8 MS. DOYER: So you were not actually on
9 the jury?

10 VENIREPERSON 3: No.

11 MS. DOYER: And jumping back, Ms. Johnson
12 in seat number 8, I saw that you also listed that you
13 had been on a jury. Was that here in Comal County?

14 VENIREPERSON 8: No, it was not.

15 MS. DOYER: Okay. Where was that?

16 VENIREPERSON 8: That was in California --
17 Woodland, California.

18 MS. DOYER: In California. Is that where
19 you're originally from?

20 VENIREPERSON 8: I'm originally a Texan,
21 but lived away from Texas for over 40-plus years.

22 MS. DOYER: Oh, wow.

23 VENIREPERSON 8: I retired back.

24 THE COURT: Are you happy to be back?

25 VENIREPERSON 8: Yes.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: I don't know if you're
2 enjoying the heat much. Were you able to reach a
3 verdict in that case?

4 VENIREPERSON 8: Yes, we were.

5 MS. DOYER: Were you the foreperson in
6 that case?

7 VENIREPERSON 8: No, I was not.

8 MS. DOYER: Mr. Peterson, I see you're an
9 attorney. What type of law do you practice?

10 VENIREPERSON 9: Primarily family law.

11 MS. DOYER: And where are you based out
12 of?

13 VENIREPERSON 9: San Antonio and Comal
14 County.

15 MS. DOYER: Do you know myself and Ms.
16 Tharp or Mr. Millan?

17 VENIREPERSON 9: I've met Ms. Tharp years
18 back.

19 MS. DOYER: In meeting Ms. Tharp, is there
20 anything about meeting her or that relationship that
21 would make it difficult for you to sit on this type of
22 case?

23 VENIREPERSON 9: No.

24 MS. DOYER: Okay. Mr. McCabe here in seat
25 number 11 --

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 11: Yes, ma'am.

2 MS. DOYER: Sir, I have it that you also
3 had served on a criminal jury; is that correct.

4 VENIREPERSON 11: That's correct.

5 MS. DOYER: And where was that?

6 VENIREPERSON 11: Here in Comal County.

7 MS. DOYER: Sir, were you able to reach a
8 verdict in that case?

9 VENIREPERSON 11: The -- I think there was
10 a plea bargain right before it started.

11 MS. DOYER: Okay. Didn't end up going to
12 y'all for deliberations?

13 VENIREPERSON 11: Correct.

14 MS. DOYER: I understand. And then I
15 have -- is it Ms. Rudloff over here, seat number 33?

16 VENIREPERSON 33: Yes.

17 MS. DOYER: I have it that you also had
18 served on a criminal jury. Where was that?

19 VENIREPERSON 33: Here in Comal.

20 MS. DOYER: Were you able to reach a
21 verdict in that case?

22 VENIREPERSON 33: Yes, we were.

23 MR. MILLAN: What number was that?

24 MS. DOYER: Seat number 33.

25 Were you the foreperson, ma'am?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 33: Yes, I was.

2 MS. DOYER: If my technical guru can get
3 this going, we'll try; if not, I'll just go.

4 Well, I'll just kind of go off the
5 PowerPoint. The defendant in this particular case is
6 charged with the felony offense of assault family
7 violence with a prior conviction for assault family
8 violence. That is a felony in the State of Texas.

9 So like I said earlier, in order for us to
10 get to a jury trial, we first have to pick a jury. Now,
11 is there anybody here who thought that jury selection
12 looked something like myself and the defense would come
13 in here and we'd pick the six jurors that we liked best
14 and then we have our 12? Anybody think that it would
15 look like that? No one?

16 I always feel like an idiot when I ask
17 this because this is truly what I believed up until I
18 started working. It doesn't work that way. Each side
19 in a felony case gets what are called ten peremptory
20 strikes. Those are strikes that can be used for pretty
21 much any reason other than constitutionally protected
22 areas. You can't strike someone just for gender, for
23 race, things like that.

24 However, let's see -- Mr. Polson here,
25 seat number 2 -- Mr. Polson, if I were trying a felony

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 possession of marijuana case and you showed up wearing a
2 T-shirt with a giant marijuana leaf on it, do you think
3 I might use one of my strikes on you?

4 VENIREPERSON 2: I'm pretty sure you
5 would.

6 MS. DOYER: Pretty sure. You would not be
7 the best juror for that particular case in my opinion.
8 That's just an example of kind of how those strikes
9 work.

10 So if each side gets ten of those, the
11 first 12 people that are left make up your jury. So
12 effectively through juror number 32, Ms. Cruz over
13 here -- it's kind of what we call the strike zone, the
14 splash zone. Y'all are right now the most likely
15 individuals to make our jury because of the ten, the ten
16 and then the 12 who are remaining.

17 Now, as we go through different areas of
18 the law, we might find that some people may be not
19 appropriate for this type of case or there is an aspect
20 of the law that they cannot follow, then it jumps back a
21 person. Then it gets back to Ms. Rudloff and so on and
22 so forth.

23 I tell you this because statistically my
24 jury will most likely come from the left side of the
25 room, first couple of rows on the right side. So I'll

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 focus most of my time and attention on those
2 individuals, not because what you in the back here have
3 to say is not important. It's simply because I have a
4 limited amount of time and I need to get to know as much
5 about you as I possibly can. Does that make sense to
6 everybody?

7 So a useful way to kind of distinguish
8 between the two roles that you have right now as a
9 member of the panel versus when you become a member of
10 the jury is to think about the oaths that you took. So
11 the first oath that you took this morning was simply to
12 answer truthfully the questions that are asked of you.
13 That's all that we're asking you to do at this point is
14 to tell us how you feel, what you think.

15 And once you become a member of the
16 panel -- of the jury, you are asked to swear that you
17 will render a true verdict according to the law and to
18 the evidence regardless of what your feelings may be
19 about the law. It's just -- you have to apply the law.
20 That's why it's so important for you to speak up now.

21 In this first phase of jury selection, we
22 can only talk to you about the law and hypotheticals
23 about the law. I can't tell you any facts of the case.
24 And the second part of the trial, it's called the
25 guilt/innocence phase. That's where the State presents

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 evidence. You basically apply the evidence to the law
2 and see, did this individual do what the State alleges
3 beyond a reasonable doubt. It's a very cold application
4 of the evidence to the law and you have a result.

5 Should a defendant be convicted, you move
6 into what is called the punishment phase. Now, in Texas
7 it's one of the few jurisdictions that lets a defendant
8 choose who will assess punishment. In this particular
9 case, the defendant has elected to go to the Judge for
10 punishment. So this jury will only decide basically
11 guilt/innocence, whether he's guilty or not guilty.

12 Now, procedurally he has to make that
13 election before we start the trial here today. It's not
14 any indication of, oh, I think I'm going to be convicted
15 so I'm going to the judge or I'm going to the jury.
16 It's just what the law requires. He has to make that
17 election ahead of time.

18 So when I say that it's important for
19 y'all to, you know, be honest in this regard and expose
20 any biases or prejudices, I want you to know that when I
21 say bias or when I say prejudice, it's not a bad word in
22 this setting. It's really important.

23 How many of you own a company or are in
24 some type of managerial position where you have to
25 conduct interviews? Quite a few.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 Let's see here, Ms. Choske?

2 VENIREPERSON 7: Yes.

3 MS. DOYER: Ma'am, when you interview an
4 individual for a position, how much time do you take to
5 interview a person?

6 VENIREPERSON 7: About an hour.

7 MS. DOYER: And do you always find out
8 everything that you need to know in that hour?

9 VENIREPERSON 7: I try to, not
10 necessarily.

11 MS. DOYER: All right. If I spent one
12 hour with all 53 of you individually, we would be here
13 forever; right?

14 So I have to find out as much as I can in
15 a very limited amount of time. That's why these
16 questions are going to be kind of structured in a funny
17 way.

18 There we go. We got power. I'm going to
19 skip through some of these. So up here I have a little
20 graphic about kind of your roles as a panel versus as a
21 jury member.

22 Now, I know that not every case is
23 appropriate for every juror, not every juror is
24 appropriate for every case. If you were the victim of a
25 home invasion and you came in today and this was a home

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 invasion trial, that might not be the most appropriate
2 case for you. You might not have had enough time where
3 that has passed where that's not so fresh in your mind.
4 It could have happened over the weekend and there's no
5 way you could set that aside.

6 As we move through these different topics,
7 there are going to be times when you say, I don't think
8 this is right for me. I can't set that aside. There
9 may be something that you want to discuss more
10 privately. Please just raise your hand and I'll mark
11 you down because I know how -- some of these matters
12 will be sensitive. You won't want to discuss them with
13 the other 52 individuals in the room. So we'll be able
14 to do that more privately up at the bench.

15 How many of you are married or have been
16 to a wedding? That usually gets me nearly everyone.
17 All right. So let me see some hands again.

18 All right. Ms. Walker?

19 VENIREPERSON 5: Yes, ma'am.

20 MS. DOYER: Ms. Walker, married?

21 VENIREPERSON 5: Yes, ma'am.

22 MS. DOYER: Okay. What are some of the
23 vows that you took at your wedding?

24 VENIREPERSON 5: Honor and obey.

25 MS. DOYER: To love, to honor and obey.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 And when the preacher or the minister or whoever turned
2 to your husband and asked, do you take Ms. Walker to be
3 your lawfully wedded wife? Will you love, honor and
4 obey her? And if he looks at you so convincingly and
5 says not I do, but I'll try, how would you feel about
6 that?

7 VENIREPERSON 5: No.

8 MS. DOYER: No. My husband and I just
9 celebrated our anniversary. And I can tell you if that
10 had been the answer, there would not have been an
11 anniversary to celebrate.

12 Why not? Why do you think the "I'll try"
13 is not so good?

14 VENIREPERSON 5: It's a vow. It's got to
15 be yes or no, not maybe.

16 MS. DOYER: Okay. Everybody hear what she
17 said? It's a vow. You've got to be yes or no, not
18 maybe.

19 Why am I bringing this up? As we move
20 through these different provisions of the law, I will
21 have to get a conclusive answer from you as to whether
22 or not you can follow the law. I always get, you know,
23 Ms. Doyer, I think I can. I'll try. I probably can.
24 I'm going to have to bring you back to wedding vows.
25 It's got to be a yes or a no.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 Okay. Parties in this case -- I've
2 already introduced myself and some of the members of my
3 team. The defendant in this case is Derek Porter. He's
4 seated here in the light blue shirt. Does anybody know
5 Derek Porter?

6 And I see a hand back there, seat number
7 25, Mr. Moon. Okay, sir. I'll mark that down. Thank
8 you.

9 Anybody know his counsel, Mr. Millan or
10 ever been represented by him? None.

11 And Mr. Matias here is also assisting.
12 Does anybody know Mr. Matias?

13 All right. What about a civilian by the
14 name of Georganne Shirley? Does anybody know her? I
15 see none.

16 Let's talk about our roles in a criminal
17 jury trial. So as a member of the jury, your role will
18 be to listen to the evidence. That comes in the form of
19 testimony from the witness stand and any exhibits that
20 are introduced through the witness stand.

21 You have to wait until everything is
22 presented. You cannot make a decision or start
23 deliberating until everything has been presented, until
24 both sides have rested and closed. You will have to
25 evaluate the credibility of the witnesses. Then you

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 will render that true verdict according to the law and
2 to the evidence.

3 Let's talk a little bit about witness
4 credibility. Has anyone seen this TV show that I have
5 up here on the screen? I see some yeses.

6 Yes, ma'am, Ms. Jacobs, seat number 26.
7 Ms. Jacobs, what show is this?

8 VENIREPERSON 26: The Voice, I think it
9 is.

10 MS. DOYER: The Voice. And how does this
11 show work? What's the premise of the show?

12 VENIREPERSON 26: They listen to your
13 voice without looking at you. And if they think you
14 have the talent and they can go somewhere with you, they
15 will turn around.

16 MS. DOYER: Did everybody hear what
17 Ms. Jacobs says? I can't say it verbatim. Basically
18 you have these judges. You have contestants who come in
19 and audition. It's like a talent show, but the judges
20 can't see the contestant. They make their evaluation
21 solely on what they hear, what comes out of that singer
22 or contestant's mouth.

23 Really that's what the law requires you to
24 do with witnesses. Every witness has to come in on
25 equal footing. If your witness is a prostitute, a

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 police officer or a priest, they are all supposed to
2 walk in here on equal footing.

3 Now, once they start to testify, that's
4 when you can start to evaluate their credibility. What
5 you can't do is give someone credibility solely because
6 they belong to a certain class or not give them
7 credibility solely because they belong to a certain
8 class or they have a certain profession, things like
9 that. I've summarized that up here, but that applies to
10 officers, civilians and the defendant should he choose
11 to testify.

12 So my question at this point is, is there
13 anybody who feels like they can't do that, like maybe
14 they already have some preconceived notions about
15 credibility? Like if a police officer takes the stand,
16 I'm automatically going to believe him. Anybody feel
17 like that? Looking at my left side of the room, anybody
18 over here? I see none. Anybody on my right side of the
19 room? Anybody feel like that, like they couldn't wait
20 until the witness testifies to assess credibility? I
21 seen none on the right side either.

22 Now, if you start changing answers when
23 Mr. Millan stands up here, I'm going to feel like a big
24 bully because I just want you to be honest with me.

25 The Judge's role in a criminal trial, he's

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 kind of like a referee. There are rules that Mr. Millan
2 and I have to play by, rules of evidence, rules of
3 procedure, rules of how to behave in a courtroom
4 basically. The Judge will make rulings on some of those
5 evidentiary issues that come up in a trial.

6 And at the end of the trial, he also will
7 give the jury what is called the Court's charge. And so
8 what I have up here is an example of one that we tried
9 here with Judge Waldrip, a far more complicated case,
10 but it's basically your little Bible or instruction
11 manual when you go back there. It will have the
12 charges. It will have what the defendant has pled:
13 Guilty, not guilty. Then it will have all of the law
14 that applies to that case.

15 We're going to talk about the law in here
16 today so I can get your feelings about it and what you
17 think. Don't feel like you have to memorize anything
18 because you're going to get it back there.

19 What about the defendant? What do you
20 think a defendant's role in a criminal trial is? Have
21 any ideas?

22 Ms. Organ, what do you think.

23 VENIREPERSON 1: To answer truthfully when
24 asked questions and -- and present his cases as much as
25 possible to his own advantage obviously.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Okay. Jump over to --
2 Ms. Campos, what do you think?

3 VENIREPERSON 4: To defend themselves.

4 MS. DOYER: Ms. Bell, what do you think?

5 VENIREPERSON 6: Present his case if he's
6 guilty or not guilty.

7 MS. DOYER: Let me change the question up
8 a little bit. What are some rights that we as citizens
9 have under the United States Constitution, the Texas
10 Constitution?

11 Mr. Martinez, what do you think, sir?

12 VENIREPERSON 10: I'm sorry, what was the
13 question?

14 MS. DOYER: What are some rights that we
15 have as citizens under our constitution?

16 VENIREPERSON 10: To be able to sit here
17 and -- and serve as a juror.

18 MS. DOYER: Sure, to be able to sit as a
19 juror. Every citizen has a right to a jury trial.
20 Y'all didn't know you were going to get a civics lesson,
21 did you?

22 Ms. Webb, what do you think? What are
23 some other rights that we have?

24 VENIREPERSON 12: Fair and speedy trial,
25 don't have to incriminate yourself, plead the Fifth if

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 you don't want to take the stand.

2 MS. DOYER: The right to a fair and speedy
3 trial. What she was just talking about, that you can
4 plead the Fifth. That's the Fifth Amendment right to
5 remain silent and not give evidence against yourself.

6 And, Mr. Garcia, can you think of anything
7 else?

8 VENIREPERSON 13: I'm not the best at it.

9 MS. DOYER: That's okay. What about
10 Ms. Lawton right next to him?

11 VENIREPERSON 14: Freedom of speech and
12 religion.

13 MS. DOYER: So you hit on most of these
14 here. So a defendant in a criminal trial has only
15 rights, no burdens, no responsibilities. He has the
16 right to the jury trial. He has the right to the
17 presumption of innocence. He has the Fifth
18 Amendment right to remain silent. He has the right to
19 elect who will assess his punishment, either a judge or
20 a jury. He has equal subpoena power with the State and
21 he has the right to have the State prove the elements of
22 the offense beyond a reasonable doubt.

23 So there are a couple of these that I want
24 to talk about in a little more detail. We'll start with
25 the presumption of innocence. All defendants are

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 presumed innocent of charges that are brought against
2 them. It's the State's burden and job to prove that
3 they're guilty. The defendant can be acquitted by the
4 presumption alone.

5 So a defendant walks in here basically
6 cloaked in this presumption of innocence. Anybody seen
7 Harry Potter or read the Harry Potter books? I see a
8 couple.

9 Okay. Mr. McCabe, are you familiar with
10 his cloak of invisibility?

11 VENIREPERSON 11: Yes, ma'am.

12 MS. DOYER: What is Harry Potter's cloak
13 of invisibility?

14 VENIREPERSON 11: He just throws it around
15 himself and sneaks in, gets the bad guy and sneaks out.

16 MS. DOYER: What he's wearing, can anybody
17 see him?

18 VENIREPERSON 11: No.

19 MS. DOYER: That's kind of how the
20 presumption of innocence works. A defendant walks in
21 cloaked in that presumption of innocence. He's
22 basically invisible.

23 Now, the presumption is rebuttable. That
24 means that the State can overcome it. As they present
25 evidence, they can kind of remove that cloak to prove

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 the case beyond a reasonable doubt. So I have here
2 Harry Potter when he first got his cloak. It's part of
3 it being removed.

4 So, Mr. Peterson -- sir, if I sent you and
5 11 other jurors right now back to the jury room and I
6 said, Mr. Peterson, it's y'all's job to decide at this
7 point is Mr. Porter guilty or not guilty of assault
8 family violence with a prior conviction --

9 VENIREPERSON 9: At this point having not
10 heard any evidence, I would say he's innocent.

11 MS. DOYER: Okay. Anybody disagree with
12 that? Everybody understand how that works?

13 At this stage no evidence has been
14 presented. He is still wearing the cloak of the
15 presumption of innocence. Does that make sense to
16 everyone?

17 Okay. Is there anybody who feels like,
18 hey, he's sitting here, must have done something. I
19 can't afford him the presumption of innocence?

20 Yes, sir, is that Mr. Criddle?

21 VENIREPERSON 16: Yes.

22 MS. DOYER: So you understand the
23 presumption of innocence and how it works?

24 VENIREPERSON 16: Yes.

25 MS. DOYER: Tell me what you're thinking,

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 sir.

2 VENIREPERSON 16: It's just emotionally
3 based, just understanding the -- I've got seven kids at
4 home. I've got a pretty big family. I have a zero
5 tolerance for family violence, so I'm -- like you said,
6 he must have done something. That's why he's here.

7 MS. DOYER: Okay. So I kind of want to
8 explain a couple of things. One is, I don't think --
9 you said you have zero tolerance for family violence.
10 And I think that's going to go for everybody in the
11 room. I highly doubt anybody sitting here is going to
12 raise their hands and say, you know, family violence is
13 okay. No one is going to say that.

14 At the same time, you've got a feeling
15 that he must have done something. There -- there is a
16 procedure by which someone is indicted and that --
17 that's presented to the grand jury and all of that, but
18 that's just to bring him to court. The State still has
19 to prove that he's guilty beyond a reasonable doubt.

20 Are you able to hold the State to their
21 burden?

22 VENIREPERSON 16: Like I said, in my mind
23 I've already kind of made a decision, so I mean
24 unfortunately --

25 MS. DOYER: That's okay. Thank you,

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 Mr. Criddle. I appreciate your honesty.

2 Is there anybody else that feels like
3 that?

4 VENIREPERSON 17: I would say maybe not to
5 his extent because I only have one kid, but I'm -- I
6 kind of rush to judge people, I guess. I have a
7 little -- I interview people. She says she interviews
8 people for an hour. I give them about ten minutes.

9 MS. DOYER: And there's Mr. Wiatrek, seat
10 number 17?

11 VENIREPERSON 17: Yes, ma'am.

12 MS. DOYER: And would you be able to
13 afford him that presumption of innocence?

14 VENIREPERSON 17: Yes, but probably it
15 could take more. I deal with people for a living, so I
16 tend to maybe judge people a little sooner than I
17 should.

18 MS. DOYER: Okay. So perhaps the evidence
19 that it would take to convince you would be different
20 than it would be for someone else?

21 VENIREPERSON 17: Probably.

22 MS. DOYER: I understand, but you can
23 afford him that presumption of innocence? And I see you
24 nodding.

25 VENIREPERSON 17: Yes.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Okay. Thank you, sir. I told
2 you, wedding vows.

3 All right. The Fifth Amendment. The
4 defendant has a right to remain silent. I have some
5 little graphics that we'll go over. He has a right to
6 remain silent, not give evidence against himself. I
7 can't call him as a witness and he can't be forced to
8 testify. This is a constitutional protection that he
9 has.

10 There are many reasons why a defendant may
11 not testify other than if I get up there, I'm going to
12 incriminate myself. So what are some reasons -- and I
13 have some graphics up here. What are some reasons why a
14 defendant may not testify other than fear of
15 self-incrimination? What do y'all think?

16 Mr. Boozel back there?

17 VENIREPERSON 23: Just rather play it out
18 with the evidence.

19 MS. DOYER: Would rather play it out with
20 the evidence. Sure, it's the State's burden; right? I
21 see you nodding.

22 VENIREPERSON 23: Yes.

23 MS. DOYER: Okay. Mr. Whitley, what do
24 you think?

25 VENIREPERSON 24: I have no idea.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: No idea. You see something on
2 my little cartoons up here? What do you think about
3 that guy who is hiding behind the curtain?

4 VENIREPERSON 18: Nervous.

5 MS. DOYER: I heard someone say nervous.
6 That would be Mr. Grell?

7 VENIREPERSON 18: Yes.

8 MS. DOYER: This one here on the far
9 right, he might be afraid to undergo cross-examination,
10 could be nervous, could have a speech impediment. There
11 are many reasons why a defendant may not testify. He
12 could take the advice of his attorney.

13 Much like Mr. Boozel said, he may be
14 waiting to see did the State meet their burden. And the
15 defense attorney could say, they haven't met their
16 burden or I don't think you need to testify or whatever
17 it may be. The point is, you wouldn't know the reason.
18 It doesn't matter. It can't be considered against this
19 defendant.

20 Now, we live in a society that it's
21 frequently that you will hear -- you want to hear both
22 sides of every story. You will typically hear both
23 sides of every story. But in a courtroom, you walk into
24 this sterile environment where there is the constitution
25 that protects these individuals and their rights.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 And so it's not that you can't want to
2 hear from a defendant. You can want to hear from him
3 all day long. Where it becomes a problem is if he
4 exercises his constitutionally protected right and you
5 hold it against him. Does that make sense?

6 Okay. So my question is, is there anybody
7 who would hold it against a defendant if he chose not to
8 testify?

9 Yes, sir, Mr. Polson?

10 VENIREPERSON 2: I just feel like if
11 you're innocent, that you would get up there whether
12 you're willing to or not or nervous about it. I've
13 always had a problem with the Fifth Amendment.

14 MS. DOYER: All right. But you understand
15 how it works?

16 VENIREPERSON 2: Yes.

17 MS. DOYER: It's the same protection that
18 applies to you, to me should I ever need it, and it's
19 constitutional protection.

20 VENIREPERSON 2: Yes.

21 MS. DOYER: Are you saying that you would
22 not be able to afford that protection to this defendant?

23 VENIREPERSON 2: It would be a little
24 rougher -- a little rougher for me to.

25 MS. DOYER: Okay. A little rougher. So

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 is that a no?

2 VENIREPERSON 2: It's a yes.

3 MS. DOYER: You would not be able to?

4 VENIREPERSON 2: That's correct.

5 MR. MILLAN: I'm sorry, is that yes, you
6 would not be able to --

7 MS. DOYER: Yes. That's right.

8 VENIREPERSON 2: I would hold it against
9 him.

10 MR. MILLAN: Okay. Thank you.

11 MS. DOYER: Does anybody else feel like
12 Mr. Polson?

13 Is that Mr. Criddle? Yes, sir, I've
14 already got you down for another, but I'll go ahead and
15 mark this one down.

16 Anybody else on the left side of the room?

17 VENIREPERSON 17: I'm probably the same.

18 MS. DOYER: Mr. Wiatrek, you would hold it
19 against this defendant if he chose to exercise his right
20 to remain silent?

21 VENIREPERSON 17: Yes, ma'am, kind of the
22 same as the first gentleman said.

23 MS. DOYER: Okay. And, Mr. Boozel, yes,
24 sir?

25 VENIREPERSON 23: I tend to associate that

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 with guilt.

2 MS. DOYER: You tend to associate that
3 with guilt.

4 All right. Anybody on my right side of
5 the room?

6 Mr. Sowell, seat number 29, okay, sir.
7 Tell me how you feel about the Fifth Amendment .

8 VENIREPERSON 29: The defendant should get
9 up there and he should be able to state what's going on
10 and why. I mean, he was arrested for a reason.

11 MS. DOYER: Okay. And you believe that if
12 he did not testify, you would hold it against him?

13 VENIREPERSON 29: Correct.

14 MS. DOYER: Anybody else on that right
15 side of the room? Okay. I see no others. Thank y'all
16 for your honesty.

17 What about the State? What do y'all think
18 the State's role in the criminal trial is?

19 Ms. Torres, what do you think? You're
20 pretty quiet back there. Got any ideas?

21 Ms. Montez, right next to her, what do you
22 think, ma'am?

23 VENIREPERSON 19: To gather the facts.

24 MS. DOYER: To gather the facts.

25 And you had a card up, Mr. Garcia?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 13: To find the truth and to
2 uphold it to the fullest extent of the law.

3 MS. DOYER: That's pretty close, sir.

4 My job as a prosecutor, what I'm ethically
5 required to do is to seek justice. That's what I'm
6 sworn to do, sworn to uphold the laws of the State of
7 Texas, to enforce them. I'm also in a criminal trial
8 tasked with proving the case beyond a reasonable doubt.

9 So let's talk about that standard of
10 proof. Beyond a reasonable doubt, does anybody have any
11 idea what that means? Anybody?

12 Mr. Boozel, yes, sir?

13 VENIREPERSON 23: There's no question.
14 It's -- I mean, it is obviously guilty.

15 MS. DOYER: Okay. No question, obviously
16 guilty.

17 Anybody else have any other ideas?

18 VENIREPERSON 17: 100 percent.

19 MS. DOYER: 100 percent, Mr. Wiatrek.

20 VENIREPERSON 3: You presented your case
21 that it can only be one person.

22 MS. DOYER: That's Ms. Sheffield?

23 VENIREPERSON 3: Yes, number 3.

24 MS. DOYER: Thank you, ma'am.

25 How many people here would like a

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 definition for that? Anybody like a definition? A
2 couple.

3 All right. So we used to have a
4 definition for beyond a reasonable doubt. It was about
5 four paragraphs long. And in a case called Paulson
6 versus State, our highest court of appeals that deals
7 with criminal cases said, you know what, it doesn't
8 really make sense. Jurors can figure it out on their
9 own and there is no definition now. So basically beyond
10 a reasonable doubt now is whatever 12 members of the
11 community say that it is.

12 I can't tell you the definition.
13 Mr. Millan can't tell you the definition. I could tell
14 you what it is not. I could tell you it's not what you
15 see on TV, beyond a shadow of a doubt. It's not beyond
16 all doubt. It's not 100 percent. It's beyond a
17 reasonable doubt.

18 I can give you an illustration that kind
19 of helps conceptualize this. I'm looking up here at the
20 screen. I've got -- so, Mr. Lopez, seat number 22?

21 VENIREPERSON 22: Loper.

22 MS. DOYER: I'm sorry, Mr. Loper, can you
23 tell me what's up there on the screen?

24 VENIREPERSON 22: Looks like puzzle
25 pieces.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Can you tell what the puzzle
2 is of?

3 VENIREPERSON 22: A puzzle.

4 MS. DOYER: Can you tell what the puzzle
5 is of?

6 VENIREPERSON 22: No.

7 MS. DOYER: Okay. What about now?

8 VENIREPERSON 22: Yes.

9 MS. DOYER: What's that a puzzle of?

10 VENIREPERSON 22: It's a firearm.

11 MS. DOYER: A picture of a gun; right?

12 VENIREPERSON 22: Yeah.

13 MS. DOYER: You know that beyond all
14 doubt; right?

15 VENIREPERSON 22: Yes.

16 MS. DOYER: There's nothing about that
17 that could be like an elephant or cotton candy. That's
18 a gun, isn't it?

19 VENIREPERSON 22: It looks like a gun to
20 me.

21 MS. DOYER: All right. What if I take
22 away a few pieces, Mr. Loper? Is that still -- is that
23 a puzzle that is a picture of a gun?

24 VENIREPERSON 22: Yes.

25 MS. DOYER: Okay. You know that beyond a

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 reasonable doubt?

2 VENIREPERSON 22: Yes.

3 MS. DOYER: What if I take away more
4 pieces but leave you those, can you still tell what the
5 object of the picture is?

6 VENIREPERSON 22: Yes.

7 MS. DOYER: Okay. That is kind of like an
8 illustration of what beyond a reasonable doubt is. The
9 State is going to give you enough for you to be able to
10 determine this is the picture in front of me. This is
11 beyond a reasonable doubt, but it's not necessarily
12 going to require every single piece. It's not beyond
13 all doubt. It's beyond a reasonable doubt.

14 That being said, is there anybody who
15 feels like beyond a reasonable doubt is not a high
16 enough burden of proof?

17 Mr. Wiatrek said 100 percent. Is there
18 anybody who feels like they would need to be convinced
19 100 percent before convicting someone of a felony
20 offense? Maybe the standard of proof isn't working.
21 Anybody feel like that over here on the left side? I
22 see none. Anybody over here on the right side feel like
23 that is just too high a burden of proof? I see none on
24 the right side.

25 I told you this case is an assault family

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 violence case with the allegation of a prior conviction.
2 So let's talk a little bit about family violence. What
3 do y'all think about when I say family violence or when
4 you hear that term?

5 Ms. Bell, seat number 6?

6 VENIREPERSON 6: I guess anger because
7 I've dealt with it --

8 MS. DOYER: All right.

9 VENIREPERSON 6: -- not like in the law,
10 but personally.

11 MS. DOYER: Okay. Anger. What else?

12 Yes, sir, Mr. Grell?

13 VENIREPERSON 18: Physical and mental,
14 emotional torture, abuse.

15 MS. DOYER: Mr. Grell, where do these
16 events typically occur?

17 VENIREPERSON 18: At home.

18 MS. DOYER: And who is typically present
19 for those events?

20 VENIREPERSON 18: The family.

21 MS. DOYER: When you say the family, who
22 do you mean?

23 VENIREPERSON 18: Kids -- the kids, the
24 wife typically.

25 MS. DOYER: Are these offenses that are

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 typically committed out in public?

2 VENIREPERSON 18: Sometimes.

3 MS. DOYER: Are there typically a lot of
4 witnesses to these types of offenses?

5 VENIREPERSON 18: Generally, no.

6 MS. DOYER: Is domestic violence, do you
7 think, about -- just about the physical abuse?

8 Ms. Tilley?

9 VENIREPERSON 15: Yes.

10 MS. DOYER: I saw you shake your head no
11 there. What are you thinking?

12 VENIREPERSON 15: No. I believe it's
13 emotional and physical -- and/or physical.

14 MS. DOYER: What is an abuser trying to do
15 when he uses that physical force against his victim?
16 What do you think?

17 VENIREPERSON 15: I think he's trying to
18 show his power and -- and bring fear into the home.

19 MS. DOYER: All right. Other than the
20 physical abuse, what are some other ways that an abuser
21 might use to exhibit control or power over his victim?
22 Can you think of any examples? What about financial
23 isolation or isolation from friends and family, things
24 like that?

25 So would you agree with me, Ms. Tilley,

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 that family violence is more than just the physical
2 beating that takes places?

3 VENIREPERSON 15: Absolutely.

4 MS. DOYER: Is there anybody that
5 disagrees with that?

6 Yes, sir, Mr. Peterson?

7 VENIREPERSON 9: I thought you had to have
8 a reasonable fear of imminent bodily harm.

9 MS. DOYER: We're talking about -- that
10 would be actually aggravated assault or an assault by
11 threat. But when we're talking about the term family
12 violence, kind of what does it mean to people in general
13 when they hear that?

14 VENIREPERSON 9: That's an apprehension of
15 physical violence, I thought.

16 MS. DOYER: It can be under the law, yes,
17 sir.

18 VENIREPERSON 9: I didn't know it included
19 mental.

20 MS. DOYER: So this would be just more
21 about the dynamics than about what actually constitutes
22 a charge.

23 My question is generally when you think
24 about family violence, what do you think about in your
25 head? Does it encompass more than just the actual

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 beating or do you tend to think it's just about the
2 beating that takes place?

3 VENIREPERSON 17: Just in general, just an
4 unhealthy situation.

5 MS. DOYER: Okay.

6 VENIREPERSON 17: Whatever leads to that.

7 MS. DOYER: So my next question is, is
8 there anyone here who themselves was a victim of -- or
9 has a friend or family member who is a victim of
10 domestic violence?

11 All right. Let me go row by row. I've
12 got seat number 3.

13 VENIREPERSON 3: Mary Sheffield.

14 MS. DOYER: Ms. Sheffield, were you
15 yourself a victim or someone else?

16 VENIREPERSON 3: I was a victim.

17 MS. DOYER: Ma'am, based on that
18 experience, would you be able to set that aside and --
19 and judge this case solely on the facts of this case?

20 VENIREPERSON 3: Yes.

21 MS. DOYER: Ms. Sheffield, did you ever
22 call law enforcement on your abuser?

23 VENIREPERSON 3: Yes.

24 MS. DOYER: Was he ever prosecuted?

25 VENIREPERSON 3: Yes.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: And I had Ms. Bell. You had
2 indicated that you were a victim?

3 VENIREPERSON 6: Yes.

4 MS. DOYER: Ms. Bell, is that something
5 that you would be able to set aside?

6 VENIREPERSON 6: Yes.

7 MS. DOYER: And did you ever call law
8 enforcement --

9 VENIREPERSON 6: No.

10 MS. DOYER: -- on your abuser?

11 Row two -- did I have anyone on row two?

12 Ms. Webb, yes, ma'am, was it someone you
13 knew?

14 VENIREPERSON 12: My brother.

15 MS. DOYER: Your brother?

16 VENIREPERSON 12: Uh-huh.

17 MS. DOYER: Ma'am, how did you know about
18 that?

19 VENIREPERSON 12: My bother was in the ICU
20 from being stabbed by his stepson over a dozen times.

21 MS. DOYER: Was the stepson prosecuted?

22 VENIREPERSON 12: Nope, walked free.

23 MS. DOYER: I'm sorry?

24 VENIREPERSON 12: He walked free.

25 MS. DOYER: Would that experience be

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 something that you could set aside?

2 VENIREPERSON 12: Yes.

3 MS. DOYER: Moving back to row three, yes,
4 ma'am, Ms. Tilley?

5 VENIREPERSON 15: Yes. I was a victim
6 and -- I and my children were victims many years ago.

7 MS. DOYER: Ms. Tilley, was law
8 enforcement ever called on any of those incidents?

9 VENIREPERSON 15: Yes.

10 MS. DOYER: Was the abuser prosecuted?

11 VENIREPERSON 15: No.

12 MS. DOYER: And would you be able to set
13 that experience aside?

14 VENIREPERSON 15: No.

15 MR. MILLAN: I couldn't hear that.

16 MS. DOYER: She said no.

17 Anyone else on row three?

18 Row four, Mr. Loper?

19 VENIREPERSON 22: Yeah, my daughter was a
20 victim.

21 MS. DOYER: Sir, how did you find out
22 about that?

23 VENIREPERSON 22: Phone call. She lives
24 in Ohio, so I got a phone call.

25 MS. DOYER: And do you know if she ever

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 called law enforcement?

2 VENIREPERSON 22: Yes.

3 MS. DOYER: And was that individual
4 prosecuted?

5 VENIREPERSON 22: Yes, he was.

6 MS. DOYER: Would you be able to set that
7 experience aside and look solely at the facts of this
8 case?

9 VENIREPERSON 22: Yes.

10 MS. DOYER: Moving back to row five,
11 anybody on row five?

12 Yes, sir, Mr. Whitley?

13 VENIREPERSON 24: I had an ex-girlfriend
14 that was -- yeah, that was part of that.

15 MS. DOYER: That she was a victim?

16 VENIREPERSON 24: Yeah. Yeah.

17 MS. DOYER: Okay. And how did you know
18 that she was a victim?

19 VENIREPERSON 24: She told me. It was
20 like in her childhood.

21 MS. DOYER: Do you know if law enforcement
22 was ever called or that individual was prosecuted?

23 VENIREPERSON 24: No. No, it wasn't.

24 MS. DOYER: It was not?

25 VENIREPERSON 24: No.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Would you be able to set that
2 experience aside, Mr. Whitley?

3 VENIREPERSON 24: I would say that it
4 would affect it a little bit, but I think I could push
5 it aside.

6 MS. DOYER: Okay. So I heard you could
7 set it aside a little bit and you think you could. So
8 I'm going to have to bring you back to those wedding
9 vows, sir. Do you think you could set it aside or you
10 could not?

11 VENIREPERSON 24: Yes.

12 MS. DOYER: Anybody else's on that row --
13 on the left side of the room?

14 Yes, sir, Mr. Garcia?

15 VENIREPERSON 13: Mother in a previous
16 relationship, stabbing.

17 MS. DOYER: She was stabbed?

18 VENIREPERSON 13: Yes.

19 MS. DOYER: And was law enforcement
20 called?

21 VENIREPERSON 13: I don't believe so.

22 MS. DOYER: Would you be able to set that
23 experience aside?

24 VENIREPERSON 13: Yes.

25 MR. MILLAN: Is that a yes?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 13: That's a yes.

2 MS. DOYER: Moving over to the right side,
3 anybody who themselves was a victim or knew -- I was
4 going to go row by row over here.

5 I have Mr. Sowell.

6 VENIREPERSON 29: Correct.

7 MS. DOYER: And who was it that you knew?

8 VENIREPERSON 29: My mother.

9 MS. DOYER: How did you know about it?

10 VENIREPERSON 29: I would hear it.

11 MS. DOYER: Was law enforcement called?

12 VENIREPERSON 29: No.

13 MS. DOYER: Would you be able to set that
14 aside?

15 VENIREPERSON 29: No.

16 MS. DOYER: Anybody else on that row?
17 Moving back -- is that Ms. Cervantes?

18 VENIREPERSON 36: yes.

19 MS. DOYER: Yes, ma'am, who was it that
20 you knew?

21 VENIREPERSON 36: Some of my students. I
22 work at Comal Independent School District and I've had
23 to call CPS and DFPS because I had a student make an
24 outcry. It was actually her and her twin sister.

25 MS. DOYER: Okay. And so that -- are you

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 a teacher?

2 VENIREPERSON 36: Yeah, kind of. I'm an
3 assistant director for an after-school curriculum-based
4 program. I'm in charge of about -- between 30 to 40
5 student at a time. At that time this past school year,
6 I've had to make the reports.

7 MS. DOYER: As a mandatory reporter, these
8 were all reported to law enforcement or to CPS?

9 VENIREPERSON 36: But I don't know the
10 outcome of it. I just know that they were no longer in
11 their parents' care. I don't know what happened beyond
12 that.

13 MS. DOYER: Okay. Ma'am, with your
14 knowledge of those incidents, would you be able to set
15 that aside and sit on this jury?

16 VENIREPERSON 36: Yeah.

17 MR. MILLAN: Is that a yes?

18 VENIREPERSON 36: Yes.

19 MS. DOYER: Anybody else on that second
20 row?

21 Row three, I have Mr. Cook, seat number
22 42. Yes, sir?

23 VENIREPERSON 42: My wife.

24 MS. DOYER: And how did you know about
25 that, sir?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 42: She told -- we talked
2 about it quite a number of times.

3 MS. DOYER: Do you know if law enforcement
4 was ever called in that case?

5 VENIREPERSON 42: Not to my knowledge.

6 MS. DOYER: Okay. Sir, would you be able
7 to set that aside?

8 VENIREPERSON 42: Yes.

9 MS. DOYER: And I had someone else on that
10 row, seat number 44, Mr. Luttrell?

11 VENIREPERSON 44: Uh-huh.

12 MS. DOYER: Yes, sir, who was it?

13 VENIREPERSON 44: I was a victim of it.

14 MS. DOYER: You were a victim? And who
15 was the perpetrator?

16 VENIREPERSON 44: My dad.

17 MS. DOYER: Your dad. Sir, was he ever
18 prosecuted?

19 VENIREPERSON 44: Yes.

20 MS. DOYER: Would you be able to set that
21 experience aside and look solely at the facts and
22 circumstances of this case?

23 VENIREPERSON 44: I would need more
24 information about the crime, about what happened.

25 MS. DOYER: Okay. I'll be able to give

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 you more information about the charge itself, but
2 nothing about the facts. I'll come back to you after
3 we've gone over that, okay? Remind me.

4 Seat number 41, Ms. Talley, yes, ma'am?

5 VENIREPERSON 41: I spent 22 years working
6 with children in a child welfare system. Currently I'm
7 a pediatric social worker at the University Hospital.
8 We get all of the level-one traumas which include
9 nonaccidental trauma.

10 MS. DOYER: Mostly hurt children?

11 VENIREPERSON 41: Correct.

12 MS. DOYER: Ma'am, with your knowledge of
13 that and your experience, would you be able to set that
14 aside?

15 VENIREPERSON 41: Yes.

16 MS. DOYER: Row four?

17 Yes, sir, seat number 46, Mr. Pozzi? Who
18 was it that you knew?

19 VENIREPERSON 46: Sister.

20 MS. DOYER: And how did you know that she
21 was a victim?

22 VENIREPERSON 46: She told me.

23 MS. DOYER: Was law enforcement called?

24 VENIREPERSON 46: Yes.

25 MS. DOYER: And was that individual

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 prosecuted?

2 VENIREPERSON 46: I think they're in court
3 today actually.

4 MS. DOYER: They have a case pending in
5 Comal County?

6 VENIREPERSON 46: No, in Bexar.

7 MS. DOYER: In Bexar? And, Mr. Pozzi,
8 would you be able to set that experience aside?

9 VENIREPERSON 46: Yes.

10 MS. DOYER: And I have -- yes, ma'am, seat
11 number 51, Ms. Lorah?

12 VENIREPERSON 51: Lorah.

13 MS. DOYER: Who was it that you knew?

14 VENIREPERSON 51: Me.

15 MS. DOYER: Ma'am, was law enforcement
16 called in that situation?

17 VENIREPERSON 51: Yes and no.

18 MS. DOYER: Was that individual
19 prosecuted?

20 VENIREPERSON 51: One of them was.

21 MS. DOYER: And, ma'am, could you set
22 those experiences aside or would it be difficult for you
23 to sit on this type of jury?

24 VENIREPERSON 51: It would be real
25 difficult.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Thank you, ma'am. I
2 appreciate your honesty. That's seat number 51.

3 And then I had -- is it Ms. Thrasher right
4 next to her?

5 VENIREPERSON 50: My daughter.

6 MS. DOYER: And how do you know?

7 VENIREPERSON 50: Phone call and him
8 coming to my house.

9 MS. DOYER: Was law enforcement called?

10 VENIREPERSON 50: Yes.

11 MS. DOYER: Do you know if that individual
12 was prosecuted?

13 VENIREPERSON 50: No.

14 MS. DOYER: And would you be able to set
15 that aside, ma'am?

16 VENIREPERSON 50: No.

17 MS. DOYER: Seat number 50.

18 Is there anybody that I've missed?

19 Yes, ma'am, Ms. Johnson?

20 VENIREPERSON 8: Yes, ma'am. The question
21 was specifically referring just to family members. I
22 want you to know that I was an educator for 39 years. I
23 was a mandatory reporter. And in those 39 years, I've
24 had to deal with family violence in terms of some of my
25 students. And right now I do volunteer work with women

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 who have been involved with domestic violence.

2 MS. DOYER: Okay. So you volunteer with
3 some type of organization?

4 VENIREPERSON 8: Yes, I do.

5 MS. DOYER: Ma'am, with that prior
6 knowledge from your -- from your work and then the
7 volunteer work that you do, would that make it difficult
8 for you to sit on this type of case, or would you be
9 able to set that aside and look at the facts and
10 circumstances of this?

11 VENIREPERSON 8: I could look at the facts
12 and circumstances.

13 MS. DOYER: Thank you, ma'am.

14 Those of you who answered that you knew
15 somebody who was a victim or were yourselves a victim
16 and law enforcement was called, did you ever express or
17 know of that individual to express regret after calling
18 law enforcement?

19 Anybody know that -- know about that?
20 Anybody know someone who would return to a violent
21 relationship? I see a couple of nods.

22 Is it Ms. Thrasher?

23 VENIREPERSON 50: Yes, my daughter.

24 MS. DOYER: Elaborate on that a little
25 bit.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 50: My daughter would go
2 back to the same situation over and over.

3 MS. DOYER: Did she ever give you any
4 reasons for that?

5 VENIREPERSON 50: She loved him, and
6 financial.

7 MS. DOYER: All right. Anybody think of
8 anything else?

9 Yes, sir, Mr. Loper?

10 VENIREPERSON 22: I know many people that
11 have went back to an abusive relationship.

12 MS. DOYER: And did they ever tell you or
13 express to you any particular reasons?

14 VENIREPERSON 22: Usually it's the person
15 was a breadwinner or they don't want to -- they want
16 somebody to be there for the kids, insecure, but those
17 things. And I just run across a lot of people that go
18 back to those relationships.

19 MS. DOYER: Is there anybody who thinks
20 that is unusual? That it would be an unusual
21 circumstance for a victim to return to that type of
22 environment? I see none.

23 Anybody who would hold it against a victim
24 if she did return to that type of environment? I see
25 none on the left side. Anyone on the right?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 Mr. Womble, you kind of nodded your head
2 there. What are you thinking?

3 VENIREPERSON 31: That would not make
4 sense.

5 MS. DOYER: Would you hold it against her
6 if she did return?

7 VENIREPERSON 31: I would.

8 MS. DOYER: Anybody else feel like
9 Mr. Womble?

10 Give me one second. Seat number 45,
11 Mr. Gamboa?

12 VENIREPERSON 45: Yes, ma'am.

13 MS. DOYER: Tell me what you're thinking
14 there.

15 VENIREPERSON 45: Like I don't understand
16 why they would go to that same situation knowing that
17 it's not going to get any better.

18 MS. DOYER: So, Mr. Gamboa, let me ask
19 you, if the State proved beyond a reasonable doubt that
20 this offense occurred, but -- you know, that she went
21 back over and over again, would you hold it against the
22 State --

23 VENIREPERSON 45: Against the State?

24 MS. DOYER: -- in proving their case?

25 VENIREPERSON 45: I would probably go with

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 the defendant because of the fact that they didn't prove
2 the case the way they should have.

3 MS. DOYER: Okay. When you say that they
4 didn't prove the case the way they should have, what do
5 you mean by that?

6 VENIREPERSON 45: Well, I mean, it depends
7 on what evidence they give is going to be the
8 determining factor.

9 MS. DOYER: What evidence the defense
10 gives?

11 VENIREPERSON 45: Well, both.

12 MS. DOYER: Okay. I do want to make --
13 make sure everybody understands that because the State
14 has the burden and the defense has the presumption of
15 innocence, the defense doesn't have to do anything.
16 They don't have to present a case. They don't have to
17 present evidence. Mr. Millan can sit here -- I know he
18 won't, but he can sit here and just play crosswords all
19 day if he wanted to. That's this defendant's right.
20 It's for me to do my job, not for them to have to prove
21 him innocent. Does that make sense to everybody?

22 VENIREPERSON 45: Yeah.

23 MS. DOYER: Okay. So, Mr. Gamboa, I had
24 somebody else back there --

25 VENIREPERSON 47: Me.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Yes, sir. Is it
2 Mr. Koltermann?

3 VENIREPERSON 47: Yes. If they keep going
4 back to the same thing, what's the difference? I'm
5 trying to figure out how to put it into words. She's
6 not -- once they do get separated, what would be the
7 reason for them to go back to that same person other
8 than security or maybe something like that? But like he
9 said, if they don't present the evidence, what's going
10 to keep her from going back again, or them going back to
11 that one person again?

12 MS. DOYER: Okay.

13 VENIREPERSON 47: That's the question that
14 I will have, you know.

15 MS. DOYER: Why she keeps going back?

16 VENIREPERSON 47: Yeah.

17 MS. DOYER: Okay. All right. Anybody
18 else on that subject?

19 Does anybody know -- anybody themselves or
20 know a friend or family member who has been accused of
21 domestic violence?

22 That's seat number 4, Ms. Campos?

23 VENIREPERSON 4: Yeah, my older brother,
24 he abused, I think, two of his older girlfriends.

25 MS. DOYER: And do you know if he was

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 prosecuted, ma'am?

2 VENIREPERSON 4: I don't believe so.

3 MS. DOYER: Do you believe that he was
4 treated fairly by -- was he -- was law enforcement ever
5 called?

6 VENIREPERSON 4: Yes, law enforcement was
7 called.

8 MS. DOYER: Do you believe he was treated
9 fairly by law enforcement and the system?

10 VENIREPERSON 4: I believe -- no,
11 actually.

12 MS. DOYER: No. Why do you say that?

13 VENIREPERSON 4: Because I saw the victim
14 and she did look like she was abused.

15 MS. DOYER: Okay. Was that circumstance
16 or your relationship with your brother, is that
17 something that you could set aside and look solely at
18 the facts of this case?

19 VENIREPERSON 4: Yeah, I think I could.

20 MS. DOYER: Anybody else on that first
21 row? Second row?

22 VENIREPERSON 9: As a younger man I was
23 accused of family violence. There was no law
24 enforcement involved. And the charges, though formal in
25 court, through a civil matter were eventually dropped.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: And, Mr. Peterson, would that
2 experience -- do you feel like you were treated fairly
3 by the system?

4 VENIREPERSON 9: Yes.

5 MS. DOYER: Sir, do you think you could
6 set that aside, or would it be difficult for you to set
7 that aside in this type of case?

8 VENIREPERSON 9: I think I could set it
9 aside.

10 MS. DOYER: Anybody else on that second
11 row? Third row?

12 Mr. Grell, yes, sir?

13 VENIREPERSON 18: I have a friend that --
14 back from high school for many years, that had married a
15 woman who was not really all there. She was prone to
16 mental breakdowns, aggressive, abusive and verbal
17 towards him. Sometimes he would react.

18 Now, he never acted on it. But at times
19 he would verbalize to me, because we were close friends,
20 that -- the desire to get rid of her in some fashion. I
21 would calm him down and -- and tell him that this is not
22 how you handle it.

23 About 15 years -- he divorced her. About
24 15 years later, the second husband hacked her to bits,
25 about 52 knife stabs and killed her and walked out of

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 the house and told her son, I just killed your mom.

2 And it was a pretty heavy-duty thing to
3 deal with because I knew she was nuts. And that was
4 a -- it was, you know -- it -- he never did anything
5 about it, but he verbalized it. He never acted on it
6 because I stopped him from ever acting on it. He
7 finally did the right thing. But ten years later or
8 however long it was, the second husband acted on it.

9 MS. DOYER: Okay. So, Mr. Grell, it
10 sounds like the friend that you had was not prosecuted
11 and he was never charged.

12 VENIREPERSON 18: No, but there was police
13 involvement on occasions to where they got close to
14 blows or to blows. And in a way, he was defending
15 himself.

16 MS. DOYER: Okay. Now, would you -- do
17 you feel like your friend was treated fairly in that
18 situation by law enforcement or the criminal justice
19 system?

20 VENIREPERSON 18: I mean, yeah, I guess.
21 It was -- they -- they sided on her side more than on
22 his because it's obviously always the guy's fault and
23 tends to be directed to the guy most of the time, but
24 she was nuts.

25 MS. DOYER: And would you be able to set

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 that experience all aside or would all of that --

2 VENIREPERSON 18: I would definitely want
3 to hear about the spouse because of that experience.

4 MS. DOYER: Would you be able to set your
5 experience aside and look solely at the evidence that is
6 presented in this case?

7 VENIREPERSON 18: Sure, but -- yeah.

8 MS. DOYER: The other -- the other portion
9 that you described where this individual ends up being
10 murdered, would you be able to set that experience aside
11 and look only at the evidence in this case?

12 VENIREPERSON 18: I don't know. That part
13 I don't know.

14 MS. DOYER: So I kind of have to pin you
15 down here.

16 VENIREPERSON 18: Could I set aside the
17 fact that she was killed ten years later by the second
18 husband? No, that's hard to deal with. That's always
19 been hard to deal with.

20 MS. DOYER: Thank you, sir.

21 Moving back to row four and -- and row
22 five.

23 Yes, ma'am, Ms. Jacobs, who is it that you
24 knew?

25 VENIREPERSON 26: I was accused of child

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 abuse.

2 MS. DOYER: And, ma'am, were charges ever
3 filed?

4 VENIREPERSON 26: No, I didn't do any jail
5 or anything for that. They took my one daughter.

6 MS. DOYER: Do you prefer to discuss that
7 more privately?

8 VENIREPERSON 26: Yes.

9 MS. DOYER: Anybody on the right side of
10 the room?

11 Okay. I see -- I see seat number 51, yes,
12 ma'am?

13 VENIREPERSON 51: My father.

14 MS. DOYER: Was accused?

15 VENIREPERSON 51: Yeah.

16 MR. MILLAN: I'm sorry, what number again?

17 MS. DOYER: Seat number 51.

18 And, ma'am, was he ever prosecuted or were
19 charges filed?

20 VENIREPERSON 51: Charges were filed. I
21 don't think my mother ever prosecuted him.

22 MS. DOYER: Okay. That relationship with
23 your father and knowing that he was charged with that,
24 do you feel like he was treated fairly by the system?

25 VENIREPERSON 51: Probably more than fair,

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 yeah.

2 MS. DOYER: Okay. Would you be able to
3 set that experience aside and look solely at the facts
4 and circumstances of this case?

5 VENIREPERSON 51: I doubt it.

6 MS. DOYER: Thank you, ma'am.

7 All right. Anybody else on this matter
8 before I move on? I see none.

9 When I say assault -- you know, this is a
10 family violence case. What types of facts or scenarios
11 kind of pop into y'all's minds when I say the word
12 assault?

13 Now, Mr. Peterson mentioned a fear of
14 imminent bodily injury. What other things do y'all
15 think about?

16 Ms. Torres, I'm going to pick on you a
17 little bit. You're so quiet back there.

18 VENIREPERSON 20: Where there has been
19 violence or something.

20 MS. DOYER: Violence.

21 I've got a couple of other quiet ones over
22 here. Ms. Colie, what do you think?

23 VENIREPERSON 27: I think assault could be
24 anything from a gun to even a baseball bat.

25 MS. DOYER: Pretty close, ma'am.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 Mr. Fieseler, what do you think?

2 VENIREPERSON 28: Like -- I think you can
3 thump them on the head and that's assault. If you use
4 physical anything, be it with your hands or an object,
5 it's -- it's definitely a threat.

6 MS. DOYER: Okay. So in Texas we have a
7 huge list of assaults. So a misdemeanor Class C assault
8 is offensive touching. Say I'm at a soccer game and I
9 get mad because some kid was mean to my nephew on the
10 field and I go push the parent. It's probably not going
11 to cause them pain. It could be offensive to that
12 individual. They could file a complaint in a JP court
13 for a Class C misdemeanor. That is a fine-only
14 misdemeanor. There's no jail time that attaches to it.

15 Moving up the chain you have a Class A
16 misdemeanor assault. Basically what makes it a Class A
17 is that it causes bodily injury. So take an assault and
18 you add the fact that it caused that other person bodily
19 injury, it becomes a Class A misdemeanor.

20 So maybe I pushed that person, but it was
21 into a rock or into a wall and that caused him or her
22 pain. Then we're now looking at a Class A misdemeanor.
23 The legislature jumps the punishment up if you cause
24 pain to another person.

25 What might make that more serious? There

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 are a couple of ways regular assault can become a
2 felony. One is if it is a family violence assault and
3 that individual has a prior conviction for family
4 violence assault. Then it's a third-degree felony.

5 Another way is if you have two or more
6 incidents of family violence within a year, it becomes a
7 third-degree felony. That's that continuous family
8 violence. If you commit assault against a family member
9 by strangling or suffocating them, that's a third-degree
10 felony.

11 And then it kind of jumps up, if you cause
12 serious bodily injury, a second-degree felony. If you
13 use or exhibit a deadly weapon kind of like Ms. Colie
14 was talking about, a bat or a gun, it's a second-degree
15 felony. If you commit family violence, use or exhibit a
16 deadly weapon and cause serious bodily injury, it's a
17 first-degree felony.

18 So there's all of these factors that can
19 play into what level assault you're looking at. What
20 we're looking at is family violence. So it's basically
21 misdemeanor family violence assault, but it's a felony
22 because this individual has previously been convicted.
23 Does that make sense to everybody?

24 Okay. So what does the State have to
25 prove beyond a reasonable doubt? We have to prove what

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 are called the elements of the offense. These come
2 directly from the penal code.

3 So I have to prove that this defendant
4 committed assault. The victim was someone he was in a
5 dating relationship with, had been in a dating
6 relationship with or was a member of his family or
7 household and that the defendant was previously
8 convicted of a family violence offense.

9 So assault in the State of Texas is to
10 intentionally, knowingly or recklessly cause bodily
11 injury. It's that simple. What is bodily injury?
12 Bodily injury is defined as physical pain, illness or
13 any impairment of the physical condition.

14 So when you look up at that definition of
15 bodily injury, what is not up there? What do you not
16 see that's required? Does it require visible injury?
17 Does it require broken bones or bruising?

18 Ms. Montez, if I came over there and I
19 pulled your hair and dragged you to the front of the
20 room, would that cause you pain?

21 VENIREPERSON 19: Probably so, yep.

22 MS. DOYER: Probably so. Would it leave a
23 mark necessarily?

24 VENIREPERSON 19: Perhaps.

25 MS. DOYER: Perhaps, okay. Where would it

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 leave a mark, Ms. Montez?

2 VENIREPERSON 19: It depends where you
3 drug me.

4 MS. DOYER: If I take you from where
5 you're sitting and I drag you right here next to juror
6 number 1, I don't touch anything else, it's just the
7 pulling of the hair --

8 VENIREPERSON 19: No.

9 MS. DOYER: -- it won't leave any marks,
10 will it? You will have felt pain, won't you?

11 VENIREPERSON 19: Yeah.

12 MS. DOYER: That's all that's required for
13 bodily injury. It's as simple as that.

14 Contrast that with serious bodily injury,
15 which is not what applies to this type of case, but I
16 want you to see the difference. Serious bodily injury
17 is bodily injury that creates a substantial risk of
18 death or that causes death, serious permanent
19 disfigurement or the protracted loss or impairment of
20 the function of any bodily member or organ.

21 So there we're talking more about the
22 broken bones, the severe beatings, things like that as
23 opposed to bodily injury where we're just looking at was
24 there pain, did it cause illness or any impairment of
25 the physical condition.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 So knowing that those are your
2 definitions, is there anybody who disagrees with that,
3 who thinks that I should have to prove visible injury or
4 I should have to prove more than just pain? Anybody
5 feel like that on the left side of the room? I see
6 none. Anybody over here on the right side of the room?

7 Is it, Mr. Collier, you look like you're
8 kind of contemplating over there, so I'm going to pick
9 on you. What do you think?

10 VENIREPERSON 38: So ask me again.

11 MS. DOYER: All right. So I don't have to
12 prove visible injury. All I have to prove is pain,
13 illness or impairment of the physical condition and that
14 is at the time of the assault. I don't have to prove
15 any of the stuff under serious bodily injury.

16 So do you -- are you okay with that
17 definition of bodily injury or do you think I should
18 have to prove something more?

19 VENIREPERSON 38: Not for that degree.

20 MS. DOYER: Not for the third degree?

21 VENIREPERSON 38: Right.

22 MS. DOYER: What about you, sir? What do
23 you think?

24 VENIREPERSON 37: Yeah. I mean, same.

25 VENIREPERSON 28: I have a question.

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 MS. DOYER: Let me just identify this
2 juror by number. That was Mr. Hurley, seat number 37.

3 And then I have Mr. Fieseler.

4 VENIREPERSON 28: How do you prove pain?

5 MS. DOYER: How do you think I prove pain?

6 VENIREPERSON 28: Ma'am?

7 MS. DOYER: How do you think I prove pain?

8 VENIREPERSON 28: You say you're hurt.

9 Can you lie?

10 MS. DOYER: Everybody can lie. That goes
11 to credibility of the witnesses. Does that make sense?

12 VENIREPERSON 28: I understand.

13 MS. DOYER: Okay. So moving on from --
14 that was Mr. Fieseler, seat number 28.

15 Now that we've kind of discussed these
16 definitions, does anybody have any questions about that?

17 All right. Previously convicted. Under
18 the law, a person has been previously convicted of a
19 family violence assault if they were adjudged guilty of
20 the offense or they entered a plea of guilty or nolo
21 contendere in return for a grant of deferred

22 adjudication regardless of whether the offense -- the
23 sentence was ever imposed or the sentence was probated.

24 Basically what that is saying is someone
25 can commit family violence, be put on probation, never

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 go to jail for it, be put on a special type of probation
2 where they never would get a conviction, but the law
3 looks at it as if they had been convicted.

4 Does anybody have a problem with that
5 being the law?

6 Yes, sir, seat number 17?

7 VENIREPERSON 17: Will we know the details
8 of that first one?

9 MS. DOYER: So the way it works is the
10 prior convictions are what are called jurisdictional
11 elements. It's something that I have to prove to prove
12 it's a felony. However, I can't get into the details of
13 the assault except for limited circumstances.

14 So you'll know or you'll have evidence of
15 the fact that this individual was previously convicted,
16 but that's pretty much all you'll get. Does that make
17 sense?

18 VENIREPERSON 17: Yeah, it makes sense. I
19 guess I would -- that would affect -- I mean, I would
20 think that has a huge effect on this case.

21 MS. DOYER: Meaning what?

22 VENIREPERSON 17: Well, I mean, I don't
23 know all of the fine details, but if I get a speeding
24 ticket, I do the deferred adjudication because that's
25 what is easiest for me. I don't know how that applies

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 here, but --

2 MS. DOYER: Well, I guess my question is,
3 if someone was put on deferred adjudication for a family
4 violence offense and then they commit family violence
5 again, that would make it that third-degree felony. So
6 the law looks at that deferred adjudication as though
7 it's a prior conviction. Do you have a problem with
8 that being the law?

9 VENIREPERSON 17: I would just like to
10 know the details of that first case. But if it's just
11 that cut and dry, I mean, I -- I don't have a problem
12 with it, but it doesn't make sense to me.

13 MS. DOYER: A lot of things in the
14 legislature do not make sense.

15 Yes, sir, Mr. McCabe?

16 VENIREPERSON 11: Will we know what the --
17 how it was adjudicated, the first one, whether it was --
18 whether it was a plea or --

19 MS. DOYER: I cannot give you the facts of
20 this particular case.

21 VENIREPERSON 11: Okay.

22 MS. DOYER: All I can tell you is I have
23 to prove he was previously convicted. And it can be in
24 any of these manners, whether it was an actual final
25 conviction where he did jail time, a true conviction

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 where he got probation or a deferred adjudication
2 probation.

3 VENIREPERSON 11: And the law says
4 regardless of how, that's --

5 MS. DOYER: That's previously convicted,
6 yes, sir. Do you have a problem with that being the
7 law?

8 VENIREPERSON 11: No.

9 MS. DOYER: Does anybody have a problem
10 with that being the law? Anybody on the right side of
11 the room?

12 Yes, ma'am, Ms. Cervantes?

13 VENIREPERSON 36: It's a question.
14 Regardless of their punishment, that means they were
15 found guilty of that original case?

16 MS. DOYER: Whether they entered a plea of
17 guilty or a nolo contendere and received any of those --
18 basically the three types of punishment, whether it's
19 jail time, straight probation or deferred adjudication
20 probation, under the law they're considered previously
21 convicted. Do you have a problem with that?

22 VENIREPERSON 36: I feel like it would
23 make a big difference if I was on the jury just
24 because -- if this is your first time or first -- the
25 first time you're accused of something, then I could

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 say, okay, it was in the evidence. Maybe he's innocent.
2 Maybe he's not. But if you become what we call a repeat
3 offender at my job, it's hard for me to believe that --
4 that you're -- it's -- the more you've been accused of
5 something, the harder it is for me to believe that you
6 haven't done it because you've already been --

7 MS. DOYER: Okay. So that brings up a
8 good point. This prior conviction is what I -- like
9 what I call the jurisdictional element. It can't be
10 considered for the purposes of he did it here, he must
11 have done it again. When we look at this particular
12 case, you're just looking at did he commit this new
13 assault. And then the prior conviction is just what
14 gets us into this courtroom. Does that make sense?

15 And so if you -- if you take that prior
16 conviction and you start to use it against him, what
17 you've done is started to erode his presumption of
18 innocence. So can you afford him that presumption of
19 innocence knowing that those convictions are out there,
20 those are jurisdictional elements?

21 VENIREPERSON 36: I can't give you a solid
22 yes, so I'm going to go with no.

23 MS. DOYER: Okay. I appreciate your
24 honesty, Ms. Cervantes. That is seat number 36.

25 Yes, ma'am, seat number 21, Ms. Allison?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 21: Yes, ma'am. I also have
2 a -- if I'm honest with you, a problem with it being a
3 repeat offense.

4 MS. DOYER: Okay. And when you say you
5 have a problem with it being a repeat offense -- as a
6 prosecutor, I have problems with repeat offenses all the
7 time. My question is, would you be able to look at this
8 as a jurisdictional element only or would it affect his
9 presumption of innocence?

10 VENIREPERSON 21: For me it affects it.

11 MS. DOYER: Okay. Thank you, Ms. Allison.
12 Anybody else?

13 Yes, ma'am, Ms. Cruz?

14 VENIREPERSON 32: It affects it.

15 MS. DOYER: Okay. This would affect his
16 presumption of innocence. Thank you, Ms. Cruz.

17 Up there when I was talking about assault,
18 we looked at the mental states: Intentionally,
19 knowingly or recklessly. You're going to get the
20 definitions of this in the charge. Intentionally is
21 basically was it your conscious objective or desire to
22 do this. Knowingly is you do this knowing that this
23 result could occur. Reckless, were you aware of the
24 risk that could happen and you disregarded the risks.

25 So that's kind of the summary of what

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 those mean, but you'll get the full definitions.
2 Intentionally, knowingly or recklessly, I don't have to
3 prove the assault was premeditated or that, you know,
4 maybe he woke up that morning and he planned it out and
5 then he went out and executed it. I don't have to prove
6 any of that. It's just intentionally, knowingly or
7 recklessly at the time of the assault. Does anybody
8 think that I should have to prove that it was a
9 premeditated assault? I see none.

10 So that's it. That's what the State has
11 to prove beyond a reasonable doubt, that it was this
12 defendant, that he caused that victim bodily injury and
13 that he had basically that special type of relationship
14 with that victim, whether it's dating, household or
15 family member, and that he was previously convicted for
16 this type of offense. That's all that the State has to
17 prove beyond a reasonable doubt.

18 Does anybody have any questions about what
19 the elements are or what the State has to prove?

20 Does anybody disagree with the fact that
21 this is a felony offense?

22 So let's talk about a couple more things
23 and then I'll wrap up. Evidence, what type of evidence
24 do you expect to see in a domestic violence case? What
25 do y'all think?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 3: Pictures.

2 MS. DOYER: Pictures. That's

3 Ms. Sheffield.

4 Ms. Sheffield, what if it's a situation
5 where there's no visible injury?

6 VENIREPERSON 3: You are probably going to
7 have to get witnesses or medical.

8 MS. DOYER: Would you require pictures in
9 order to find a defendant guilty of this type of
10 offense?

11 VENIREPERSON 3: No.

12 MS. DOYER: Is there anybody who would
13 require pictures? I've got a couple.

14 Ms. Campos, yes, ma'am?

15 VENIREPERSON 4: Yes, I would require
16 pictures or a lot of -- a lot of witnesses, I guess.

17 MS. DOYER: Or a lot of witnesses. I'll
18 come back to that. I had another hand back here.

19 VENIREPERSON 47: That was me. Pictures
20 will come -- like they say, a picture is worth a
21 thousand words, so --

22 MS. DOYER: Is that seat number 48?

23 VENIREPERSON 47: No, 47.

24 MS. DOYER: 47, Mr. Koltermann.

25 Okay. Now, same question I asked

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 Ms. Sheffield, what if there's no visible injury?

2 VENIREPERSON 47: Well, don't they take
3 pictures during -- if she goes to the hospital and they
4 have pictures taken then.

5 MS. DOYER: Okay. Let me ask you this. I
6 went over the definition of bodily injury. All that it
7 requires is pain.

8 VENIREPERSON 47: It's just pain.

9 MS. DOYER: Okay.

10 VENIREPERSON 47: So it can be verbal like
11 bullying?

12 MS. DOYER: No. It has to be physical
13 pain. So it could be something like I was talking about
14 where I pulled her hair. It could be a slap. Do you
15 think that she's always going to go to the doctor for
16 that?

17 VENIREPERSON 47: No.

18 MS. DOYER: Do you think we're always
19 going to have pictures that will show you, yes, there
20 was pain?

21 VENIREPERSON 47: Okay.

22 MS. DOYER: Are you good?

23 VENIREPERSON 47: See, that's where it
24 gets confusing.

25 MS. DOYER: Sure. I understand. Knowing

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 that that's the definition, would anybody require
2 photos?

3 Ms. Campos, what do you think?

4 VENIREPERSON 4: Yeah, I would.

5 MS. DOYER: You would still require them?

6 VENIREPERSON 4: Yeah.

7 MS. DOYER: Mr. Fieseler?

8 VENIREPERSON 28: Is there such a thing as
9 psychological pain?

10 MS. DOYER: There is, but that is not a
11 criminal offense.

12 VENIREPERSON 28: That's not an offense.

13 MS. DOYER: It's not a criminal offense.

14 VENIREPERSON 28: Oh, okay.

15 MS. DOYER: It might be a tort, something
16 you could sue over, but not something that I deal with.

17 What else might you expect to see? We
18 talked about photos, witnesses.

19 Okay. Ms. Organ, what type of witnesses?

20 VENIREPERSON 1: Other family members,
21 friends, anybody who might have been present.

22 MS. DOYER: Okay. Anybody who might have
23 been present.

24 Ms. Organ, let me ask you, do you think
25 that there are typically witnesses to these types of

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 offense?

2 VENIREPERSON 1: Not necessarily.

3 MS. DOYER: Would you require me to have
4 another witness?

5 VENIREPERSON 1: Not necessarily. It goes
6 to the witness' credibility.

7 MS. DOYER: Okay. What else? What do
8 y'all think?

9 Mr. McCabe, yes, sir?

10 VENIREPERSON 11: I think corroboration.

11 MS. DOYER: In what fashion?

12 VENIREPERSON 11: That sort of thing that
13 happens to other people perhaps.

14 MS. DOYER: Okay. So typically you cannot
15 show that it happened to somebody else because then it
16 could be considered we're just trying to convict him of
17 being a bad person in general; right? There might be
18 other ways to corroborate a victim's accounts.

19 So what do you think when you say
20 corroboration? Are there other things that you might
21 think about?

22 VENIREPERSON 11: I would think witnesses
23 could corroborate it.

24 MS. DOYER: Okay. Maybe if there are
25 witnesses?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 VENIREPERSON 11: Right.

2 MS. DOYER: What else?

3 VENIREPERSON 11: I think police reports.

4 MS. DOYER: This is the one that I was
5 waiting for, police reports. By law I cannot introduce
6 police reports. I'm required to call the witnesses in
7 here to testify. So police reports, witness statements,
8 video statements, anything like that that might have
9 been given during the investigation, I can't just put it
10 into evidence.

11 He also has the constitutional right to
12 confront the witnesses, so I have to bring those
13 witnesses in. A lot times people ask me when I get back
14 into the jury room, why didn't we see the police report
15 or why didn't we see the video or whatever it may be.
16 Because the law doesn't allow me to do it. It's what's
17 called hearsay. I can't put that in. I have to bring
18 in the witness. Does that make sense to everybody?

19 Okay. So when we think about -- yes, sir,
20 Mr. Wiatrek?

21 VENIREPERSON 17: Can the police officers
22 that responded be witnesses?

23 MS. DOYER: They can be witnesses. And it
24 depends on, you know, kind of what -- what their
25 function was. I've talked about hearsay. If all he did

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 was take a statement from the victim, he can't just come
2 in here and say this is what the victim told me because
3 that's hearsay. He can come in here and talk about his
4 observations, things like that. But there are -- when I
5 talk about those legal rules, they're kind of funny and
6 they make things strange when we actually present this
7 case.

8 Now we talked about the definitions of
9 bodily injury. Who is typically present when this type
10 of offense occurs? I think it was Mr. Grell who was
11 saying, it's typically something that happens in the
12 home, not usually a lot of witnesses around. That
13 leaves you with who?

14 Ms. Lawton, who does that leave you with?

15 VENIREPERSON 14: The victim and the
16 defendant.

17 MS. DOYER: The victim and the defendant.
18 And that defendant has a constitutional right to remain
19 silent.

20 So, Ms. Lawton, who does that leave you
21 with? The victim or witnesses, if there are any; right?

22 Okay. So I want to talk about something
23 called the one-witness rule in the State of Texas. So
24 what if you're the victim of the crime and you're the
25 only witness?

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 I'll pick on Mr. Schultz over here.

2 VENIREPERSON 30: Yeah.

3 MS. DOYER: Mr. Schultz, say you're at
4 H-E-B late at night. You're loading your groceries up
5 into the car. Someone comes up to you with a gun and
6 says, give me your wallet. You do. You give him the
7 wallet. He takes off running. You saw his face. He
8 takes off running. You call law enforcement. You make
9 a report. They do a photo lineup. You're able to pick
10 him out of the lineup. The wallet is never recovered.
11 Who knows what this yahoo did with it.

12 This is an aggravated robbery. The case
13 gets presented to the district attorney's office. The
14 district attorney presents it to the grand jury. We get
15 an indictment. He pleads not guilty and we go to trial.
16 I call you in to testify about what happened to you that
17 night. All right. Now, Mr. Schultz seems like a
18 credible individual.

19 Mr. Collier back there -- Mr. Collier, if
20 I called Mr. Schultz to testify about what happened to
21 him that night, is -- would you still require more
22 evidence before you could convict this individual of
23 aggravated robbery?

24 THE COURT: You're going to have to
25 qualify that. I mean, it's going to need to be, if you

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 find and believe.

2 MS. DOYER: I will, sir.

3 THE COURT: Okay.

4 MS. DOYER: Would you require additional
5 evidence?

6 THE COURT: Well, now, you didn't qualify
7 that.

8 MS. DOYER: I want to ask this question
9 first.

10 THE COURT: Okay. Well, then, I'm not
11 going to allow it --

12 MS. DOYER: Okay.

13 THE COURT: -- because it's an improper
14 question.

15 MS. DOYER: What other evidence do you
16 think that there would be at this stage, Mr. Collier,
17 seat number 38?

18 VENIREPERSON 38: I'm thinking weapons.

19 MS. DOYER: Weapons, maybe if it was
20 recovered; right?

21 VENIREPERSON 38: Right. DNA, blood.

22 MS. DOYER: Okay. What if none of that
23 stuff was ever recovered because the gun wasn't
24 recovered, the wallet wasn't recovered, any of that?

25 VENIREPERSON 38: And there is no witness

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 besides the two people?

2 MS. DOYER: Yes. So I'm just asking you
3 about the evidence. There wouldn't be any other
4 evidence; right?

5 VENIREPERSON 38: Right.

6 MS. DOYER: So what we have in Texas is
7 called the one-witness rule. So the way that rule works
8 is if you hear one witness, you believe that witness
9 beyond a reasonable doubt and that witness' testimony
10 proves all of the elements of the offense, would you
11 require additional evidence before returning a verdict
12 of guilty?

13 VENIREPERSON 38: I certainly would want
14 it.

15 MS. DOYER: Sure. A lot of people would.
16 In fact, the State would, but would you require
17 additional evidence?

18 THE COURT: And the qualification that is
19 important here is found starting on line two with the
20 "and," and you believe the witness beyond a reasonable
21 doubt all the way down through about the fourth or fifth
22 line where it says, proved all of the elements of the
23 offense.

24 The point being is if you find from one
25 witness that that witness is credible and you -- and you

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 believe beyond a reasonable doubt all of the elements
2 have been proven to you, would you still require more.

3 MS. DOYER: Let me move to kind of my
4 summary slide here.

5 THE COURT: We've got about five minutes,
6 so you need to wrap up for lunch.

7 MS. DOYER: Yes, sir.

8 So the law is a conviction can be
9 supported on the uncorroborated testimony of a single
10 witness if the witness testifies to all of the elements,
11 you believe that witness and that witness convinces you
12 beyond a reasonable doubt. So that's the premise is
13 that they testify, you believe them and it convinces you
14 beyond a reasonable doubt.

15 My question is, if all of that is true,
16 would you still require more? So let me start over here
17 on the left side. Is there anybody here who would
18 require more?

19 VENIREPERSON 4: Just so I'm understanding
20 this correctly, all you have is the word of the
21 victim --

22 MS. DOYER: In this hypothetical.

23 VENIREPERSON 4: -- or the witness --

24 MS. DOYER: Yes, ma'am.

25 VENIREPERSON 4: -- and you don't have

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 anything else?

2 MS. DOYER: Yes, ma'am.

3 VENIREPERSON 4: I think I would require
4 more --

5 MS. DOYER: Okay.

6 VENIREPERSON 4: -- more evidence.

7 MS. DOYER: Anybody else on the left side?
8 Anybody on the right side?

9 UNIDENTIFIED VENIREPERSON: The only thing
10 I will say in -- well, saying the witness or the guy
11 that was being held up described the tattoo -- if the
12 guy had a tattoo on his neck and he described it and we
13 see that -- the tattoo on him, I have no problem with
14 prosecuting that guy. If there's some kind of hard
15 evidence that I can see, you know, that will help me
16 make the decision that -- of what it needs to be.

17 MS. DOYER: Okay. So it sounds like if
18 that witness would provide information to you that you
19 find credible, you believe that witness?

20 UNIDENTIFIED VENIREPERSON: That's right.

21 MS. DOYER: And that's all the law
22 requires you to do.

23 Anybody else on the one-witness rule that
24 feels like they would require more?

25 Finally -- oh, Mr. Boozel, I already have

June 5, 2017

Jury Voir Dire by Ms. Doyer

1 you down on a couple of things, so if -- the Fifth
2 Amendment and some other things, so I'm going to kind of
3 move along. It's not that I don't think it's important,
4 but I've got some time issues here.

5 I went over the fact that this is a
6 guilt/innocence only issue for the jury. So is there
7 anyone here who is uncomfortable with the fact that they
8 won't be able to assess punishment?

9 Is there anybody who feels like that would
10 make it -- make them unable to also decide
11 guilt/innocence? I see none on the left. Anybody on
12 the right side?

13 Finally, is there anybody who feels like
14 they could not sit in judgment of another? Sometimes
15 there are moral, ethical or religious reasons why
16 someone feels they cannot sit in judgment of another
17 individual. Is there anybody who feels like that? I
18 see none.

19 It's about time for me to wrap up and I
20 bet you're hungry. I thank you for your time and
21 attention and I look forward to sharing the case with
22 you.

23 THE COURT: Okay. Ladies and gentlemen,
24 if you will, just leave those little cards right there
25 on your seat. That way none of them will get lost

June 5, 2017

Jury Voir Dire by Mr. Millan

1 during the lunch hour. We'll be back here probably
2 about -- let's just say 1:20. That will give everybody
3 time to get in and out of the building.

4 Please -- at this juncture please do not
5 do any -- any research or whatever you want to call it,
6 investigation, Google or otherwise. Just have a good,
7 safe lunch and we'll see you in about an hour and 20
8 minutes or so. Thank you.

9 (Panel leaves the courtroom)

10 THE COURT: Yes, ma'am?

11 UNIDENTIFIED VENIREPERSON: Did you need
12 to speak with me?

13 MS. DOYER: There was an indication of
14 child abuse. I didn't know if she wanted to reveal it
15 now.

16 THE COURT: We'll do it after lunch.

17 (Recess taken)

18 (Open court, defendant and panel present)

19 THE COURT: Mr. Millan, you may proceed.

20 JURY VOIR DIRE

21 MR. MILLAN: May it please the Court,
22 counsel for the State.

23 Ladies and gentlemen, good afternoon. I
24 now get the thankless task of talking to you after
25 lunch. I'm a little bit tired. I can't imagine you

June 5, 2017

Jury Voir Dire by Mr. Millan

1 guys, but this is where we're at.

2 Obviously being on the defense side, we
3 want to talk to you about the law in maybe a little bit
4 different way than the State does. And if I could find
5 my presentation -- I'm doing this for the first time.

6 Okay. My name is James Millan. I
7 represent Mr. Derek Porter. This is the State of Texas
8 versus Derek Porter.

9 My second chair here is retired Lieutenant
10 Colonel Edward Matias. I told him I was going to give
11 him his whole title. He's here to help me out. It's
12 always nice to have a second set of eyes during voir
13 dire. There's so many people here. Trying to keep up
14 with everyone can be difficult for one person.

15 Just to introduce myself a little bit, I
16 was born and raised in San Antonio. I went to Clark
17 High School, went to UT Austin for college. I worked as
18 an accountant for a while, hated it. I went to law
19 school in Colorado, came back. I worked in Dallas for
20 about five years and then came back to San Antonio.

21 I office in San Antonio, but I do what I
22 call the triangle: Bexar County, Comal County,
23 Guadalupe County. Those are my main counties. And I've
24 done a lot of work here for the last decade. I've
25 worked with Judge Waldrip and tried a few cases against

June 5, 2017

Jury Voir Dire by Mr. Millan

1 Ms. Doyer. We all know each other pretty well over
2 here.

3 Now, in terms of -- you know, the first
4 thing I like to talk about is presumption of innocence.
5 It's an easy thing to say, but it's more than just
6 words. It's actually kind of somewhat emotional or
7 something more of a feeling even. How many of you-all
8 when you walked into the room this morning were looking
9 around and going, I wonder where the defendant is. And
10 then were asking yourselves, I wonder what he did. How
11 many people asked that question? Be honest.

12 Okay. And that's natural in your -- in
13 your -- and the reason you're asking yourself that is
14 because, hey, we're in a courtroom. You've been
15 trained. I mean, there's lots of Law & Order shows on
16 TV. You've seen it. It's all been played out
17 dramatically on -- on TV and in movies and stuff.
18 And -- and it becomes kind of second nature just to
19 assume, hey, you must have done something.

20 And here's another question for you. You
21 kept on hearing the word "victim." What does victim
22 mean? Something happened to this person. And if you're
23 using that word victim, what does that say about the
24 presumption of innocence? I'm going to be saying
25 complainant from here on out.

June 5, 2017

Jury Voir Dire by Mr. Millan

1 Okay. And so if -- and the reason I don't
2 use the word -- because there is no victim at this
3 point. All right. There's no victim, period, as far as
4 I'm concerned. So you're not going to hear that word
5 from me. And I hope that you guys aren't going to use
6 it either because it flies in the face of the
7 presumption of innocence. Is that fair enough?

8 Burdens of proof -- now, I'm going to go
9 through a few of them. Preponderance of the evidence.
10 Let's talk about like a car accident case. How many of
11 you-all have seen people go to civil court to fight it
12 out over a car accident; right? And the burden of proof
13 in a car accident case is what they call preponderance
14 of the evidence. That's just like 51, 49, just one -- a
15 little bit more than the other. If one side is more
16 responsible than the other, they can be held liable for
17 damages. And depending on how liable they are and --
18 and how much damage there is will determine how much
19 they have to pay; right?

20 And then you've got -- I've got here clear
21 and convincing evidence. Anybody know what clear and
22 convincing evidence is? Nobody does. How many of y'all
23 have heard of Child Protective Services? Okay. Some of
24 y'all have dealt with them in your work; right?

25 Now, Child Protective Services will

June 5, 2017

Jury Voir Dire by Mr. Millan

1 determine whether or not a child has been placed -- you
2 know, had neglectful supervision, been abused; right?
3 And they make the determination of whether or not that
4 child should stay in the home; right? And their
5 determination of whether or not that child should stay
6 in the home is based on clear and convincing evidence.

7 Now, how many of you-all have children
8 that are -- that are under the age of 18?

9 Okay. Now, I'll start with you,
10 Mr. McCabe. How old are your kids?

11 VENIREPERSON 11: 14, 19, 20 and 22.

12 MS. DOYER: Okay. So the 19-, 20- and
13 22-year-old, they can have them; right?

14 The 14-year-old, would you expect the
15 State of Texas to have to meet a pretty high burden in
16 order to take that child out of your home?

17 VENIREPERSON 11: Yes.

18 MR. MILLAN: Anybody on the next row that
19 said they have young children?

20 Mr. Wiatrek, would you expect the State of
21 Texas to meet a high burden to take your children out of
22 your home?

23 VENIREPERSON 17: Absolutely.

24 MR. MILLAN: Everybody agree with that?
25 Anybody think it should be a low burden? I've never

June 5, 2017

Jury Voir Dire by Mr. Millan

1 heard anybody say it should be a low burden.

2 Now, beyond a reasonable doubt is actually
3 is a higher standard than clear and convincing evidence.
4 Okay. And so -- and I know this is difficult because,
5 you know, you're talking about somebody else versus your
6 own children. And I know it's like, oh, you're trying
7 to play into the emotional dynamic of it, but I'm
8 talking about the very realistic standard here.

9 And the legal standard says it is a higher
10 burden to place somebody -- to take away somebody's
11 liberty and to find them guilty of an offense than it is
12 to take your children out of your home.

13 So I hope in seeing that difference, that
14 it -- that it brings it home. Hey, this is a really
15 high burden that the State has to meet. And the State
16 is right, this doesn't mean beyond a shadow of a doubt.
17 It doesn't mean 100-percent proof. It means a pretty
18 high level of proof. For those of you with young
19 children, I think you understand that; right?

20 Now, what -- let me ask you a question.
21 Why do you think the -- the burden of proof is so high
22 for -- for a criminal case?

23 I'm going to pick on you, Ms. Choske,
24 because I have a big blank box here. You haven't said
25 very much. Why do you think the burden is so high?

June 5, 2017

Jury Voir Dire by Mr. Millan

1 VENIREPERSON 7: For proof of a crime
2 versus proof of protecting your children?

3 MR. MILLAN: Versus any other standard of
4 proof.

5 VENIREPERSON 7: I would say because -- I
6 would say because when you're talking about taking away
7 someone's freedom and their liberty, that could have a
8 greater effect on society. I can have a negative effect
9 on my children in how I raise them, but they can be
10 rescued from me versus if I don't get punished for my
11 deeds, I could have a huge negative effect on society.

12 MR. MILLAN: You said the keyword,
13 "liberty." The liberty interest; right? If you were
14 taking away somebody's liberty, you're essentially
15 taking away their decision-making ability; right?
16 People are making the decisions for them. What's more
17 important than that?

18 You know, if you lose the ability to -- to
19 decide, you know, when you're going to wake up in the
20 morning, what you're going to do, what you're going to
21 eat, you know, that liberty interest -- I mean, that's a
22 pretty big deal, isn't it?

23 Does anybody think that the -- that the
24 burdens of proof are wrong, that the -- that the burdens
25 of proof should somehow be shifted and that -- and it

June 5, 2017

Jury Voir Dire by Mr. Millan

1 should be a lower standard for criminal offenses where
2 liberty is at stake? Everybody agree with the standard
3 of proof?

4 Who is that? Who do you see there?
5 Civilian versus police testimony. It's the Village
6 People. Who do you believe most? The Indian or the
7 police officer? No, I mean, it's -- it's -- and I
8 put -- look, I've got to wake you up somehow. You're
9 going to be -- you've got all different kinds of people
10 that could testify.

11 Okay. And -- and you're not going to know
12 them, you know -- if you know them, you're not going to
13 be on the jury panel more than likely; right? You're
14 not going to know these people. And so as they get up
15 on that stand, it's the first time you've ever dealt
16 with these people; right?

17 So my question to you-all is -- is just
18 because a person gets up there and they have -- they
19 have a badge and they have a uniform, are you going to
20 believe their testimony over a civilian witness just
21 because of the badge? Anybody on this first row?
22 Second row? Third row? Fourth row?

23 Mr. Loper?

24 VENIREPERSON 22: I believe I would.

25 MR. MILLAN: And you're a retired police

June 5, 2017

Jury Voir Dire by Mr. Millan

1 officer; right?

2 VENIREPERSON 22: Yes.

3 MR. MILLAN: And thank you for your
4 service.

5 VENIREPERSON 22: Thank you.

6 MR. MILLAN: And why is it that you would
7 believe a police officer over a civilian witness?

8 VENIREPERSON 22: Well, because I was a
9 police officer for 26 years. So I've seen both sides
10 and I would just lean towards the credibility and
11 honesty of a police officer.

12 MR. MILLAN: Okay. And thank you for your
13 honesty. And so it's -- you actually believe on average
14 you -- and without knowing anything about the witness
15 before they get up there, that the police officer is
16 going to just generally be a more honest person than the
17 average civilian?

18 VENIREPERSON 22: If it boils down to --
19 if I had to make a decision who I thought was telling
20 the truth, I would go towards the police officer.

21 MR. MILLAN: Okay. Fair enough.

22 Anybody else feel that way, that if it's
23 just --

24 UNIDENTIFIED VENIREPERSON: I'd have to
25 say the same thing.

June 5, 2017

Jury Voir Dire by Mr. Millan

1 MR. MILLAN: And let me make this
2 distinction because I know this is going to come up and
3 I'm looking -- on a chessboard, I'm looking at several
4 moves ahead here.

5 Now, the question is going to become --
6 and I think Mr. Loper actually has answered it in a way
7 that obviates this question, but do you believe a police
8 officer's testimony more because of his training and
9 experience; or do you believe it more just because, in
10 general, you think that they're going to be more honest
11 and trustworthy?

12 UNIDENTIFIED VENIREPERSON: The former,
13 and that's what I was going to say. They're trained to
14 be more factual and to look at things in a more
15 impartial way.

16 MR. MILLAN: So when choosing between the
17 way Mr. Loper described it of just generally believing
18 one is more honest and trustworthy than the other versus
19 just the training and experience angle, who falls on
20 Mr. Loper's side of saying, you know what, I just -- in
21 general, I think a police officer is going to be more
22 honest and trustworthy than a civilian?

23 Okay. Let's -- we'll go through -- we've
24 got Mr. Criddle --

25 VENIREPERSON 16: Yes, sir.

June 5, 2017

Jury Voir Dire by Mr. Millan

1 MR. MILLAN: -- number 16. Mr. Wiatrek,
2 number 17. Number 21, is that Ms. -- Ms. Allison?

3 VENIREPERSON 21: Yes, sir.

4 MR. MILLAN: Was there anybody else on
5 that row?

6 On the back row, number 23, Mr. Booze?

7 VENIREPERSON 23: Yes.

8 MR. MILLAN: Number 24, Mr. Whitley.

9 Who else was -- who else raised their
10 hands on this side? Anybody else?

11 Okay. I saw some on this side here.
12 Number 31, Mr. Womble; number 29, Mr. Sowell; number 37,
13 Mr. Hurley; number 36, Ms. Cervantes; number 43,
14 Ms. Schreiber.

15 Anybody else on this side? I thought I
16 saw more numbers. Y'all change your minds? There's
17 nobody on the first row. Nobody on the second row.
18 That was -- that had to do with training and experience.
19 No one on that row. Okay. Let me just make sure I
20 didn't miss anybody. Let me get rid of the Village
21 People. Did I miss one?

22 Okay. Fifth Amendment, now, the State
23 touched on this, but, you know, I -- the way -- I like
24 to approach this one a little differently than they do
25 obviously. And the way I do -- I've got three kids.

June 5, 2017

Jury Voir Dire by Mr. Millan

1 I'm married and three kids. I have an 11-year-old, a
2 six-year-old and a four-year-old. And my 11-year-old
3 Chloe is a sweetheart. She's like a second mom, always,
4 you know, telling us if the -- if the little ones are
5 doing bad stuff and, you know, looking after them as
6 well.

7 Obviously you can't always be there. Mom
8 can't always be there. I can't always be there and --
9 and sometimes my six-year-old, Liam, and my
10 four-year-old, Hattie, are together in the backyard,
11 down in the living room or wherever doing stupid things
12 and -- and they fight a lot. They are just ridiculous
13 sometimes. I'll tell you it's unbelievable. They like
14 try to outdo each other with their misdeeds sometimes it
15 seems like.

16 The problem is, you know, a lot of times
17 it's just the two of them and our dog Rufus, but he
18 can't talk. You know, I hear something shatter
19 downstairs and I'm like, oh, gosh, sugar jar on the
20 ground broken. Who did it? He did it. She did it.
21 You know, they're looking at each other and, you know --
22 of course, one is going to blame the other and -- and
23 how do you decide who is telling the truth?

24 Both are little liars. They're going to
25 cover their own tracks, you know. And unless you have

June 5, 2017

Jury Voir Dire by Mr. Millan

1 actual evidence of who did it, it's just like one's word
2 against the other. And sometimes I can figure it out
3 and sometimes you can't. So you want to hear both sides
4 of the story; right?

5 You have got two kids arguing with each
6 other. You want to hear both sides of the story.
7 And -- and so a lot of us as parents can -- we're
8 trained to -- to want to hear those two sides and it
9 becomes second nature, right, to want to hear those two
10 sides of the story. There's other contexts in life
11 where it's, you know, the same deal; right?

12 So, you know, knowing that -- I mean, how
13 many of you want to hear both sides of the story if you
14 have got two kids who are arguing with each other? How
15 many of you want to hear both sides of the story?

16 Okay. Now, those of you who raised your
17 hands, the obvious follow-up is you may not hear both
18 sides of the story in this trial. And the law actually
19 says that -- the Fifth Amendment of the United States
20 Constitution, one of the original Bill of Rights from
21 over 200 years ago gave the right that the defendant
22 does not have to testify and -- and beyond that, you as
23 a juror cannot hold that against them.

24 So knowing what your -- what your
25 instincts are in wanting to hear what both sides say and

June 5, 2017

Jury Voir Dire by Mr. Millan

1 knowing what the law says, how many of y'all who want to
2 hear both sides naturally and instinctively feel that
3 because of that, I don't think I could be fair to this
4 defendant if he chose not to testify?

5 Mr. Polson, you already -- you said it on
6 the first one, so I'm going to -- I'm going to agree
7 that you feel the same way.

8 Anybody -- and I know I said it maybe a
9 little different than the State did. Did it change any
10 of y'all's minds? Anybody on the second row? Third
11 row?

12 You -- I believe you said the same thing
13 before, Mr. Criddle.

14 VENIREPERSON 16: Yes, sir.

15 MR. MILLAN: Anybody else? Mr. Wiatrek.
16 And Ms. Allison and -- I'm sorry, Boozel and Whitley,
17 numbers 23 and 24.

18 Anybody on this side? Mr. Sowell, 29.
19 Anybody else on the first row? Second row? Ms.
20 Cervantes. Let's see, Mr. Schreiber, 43. Thank you.
21 Anybody else from this side?

22 Okay. Assault, you know, the State pretty
23 much explained this one. Intentionally, knowingly,
24 recklessly causing bodily injury to another. It's
25 pretty clear. Intent or knowing is -- I guess intent

June 5, 2017

Jury Voir Dire by Mr. Millan

1 and knowing are somewhat the same. It's like -- intent
2 is more like, well, I planned it out ahead of time.
3 Knowing is, yes, I'm doing it right now, but I maybe
4 didn't plan it out very well. And recklessly is, well,
5 I -- I appreciated the risk that I was going to do
6 something wrong, but ignored it. It's a pretty standard
7 statement over those definitions. I'm not going to
8 repeat that for you.

9 Bodily injury, State talked about it.
10 Physical pain, illness or any impairment of the physical
11 condition. I'm not arguing that. I mean, obviously you
12 get -- a person has to feel pain for it to -- for it to
13 meet the level that's going to be necessary in this
14 trial.

15 Affirmative defenses, something the State
16 did not talk to you about. How many of you-all own your
17 own home? Most of you in here. Now, those of you who
18 own your own home, if somebody came -- started going up
19 to your windows and smashing the windows around your
20 house -- walking around the house with a crowbar and
21 just smashing them, do you have a right to do something
22 to stop them from doing it? You think you have a right
23 to stop them? That's -- that's protection of property;
24 right? That's your property. They're destroying it.
25 You think you should have to wait for the police to show

June 5, 2017

Jury Voir Dire by Mr. Millan

1 up to stop them from doing it? Why?

2 UNIDENTIFIED VENIREPERSON: Because it's
3 my property and it's in the constitution. My --
4 protection of my property.

5 MR. MILLAN: You have a right to protect
6 your property; right?

7 UNIDENTIFIED VENIREPERSON: Yes.

8 MR. MILLAN: Anybody think you should have
9 to wait for the police to show up to protect your
10 property if somebody is smashing your windows?

11 UNIDENTIFIED VENIREPERSON: First line of
12 defense.

13 MR. MILLAN: And the person smashing your
14 windows, unless -- let's say that person, after smashing
15 your windows and you open your door, they start charging
16 at you. Do you think at that point you might be able to
17 use force to stop them? What about deadly force?
18 Anybody disagree that you should be able to use deadly
19 force to protect your home?

20 UNIDENTIFIED VENIREPERSON: Question, are
21 they in your house?

22 MR. MILLAN: You're standing at the door
23 and they're coming up to you after they smashed your
24 windows.

25 UNIDENTIFIED VENIREPERSON: I'd probably

June 5, 2017

Jury Voir Dire by Mr. Millan

1 use it.

2 MR. MILLAN: They've already proven that
3 they're willing to destroy your property, right, and
4 they're charging at you with a crowbar in their hand.

5 VENIREPERSON 52: Shut the door.

6 MR. MILLAN: Do you think that you should
7 have a duty to retreat from them?

8 VENIREPERSON 52: Yes.

9 MR. MILLAN: If somebody is charging at
10 you with a crowbar after they've been smashing your
11 windows, do you think you have a duty to run away from
12 them? Ms. Lorah, 51.

13 Anybody else agree that you should have a
14 duty to retreat if somebody is smashing your windows and
15 attacking you with a crowbar or looking like they're
16 going to attack you at the front door with a crowbar?

17 What if you're in your car and somebody is
18 walking around your car smashing the windows in on your
19 car? You're in the driver's seat and somebody comes up
20 with a -- with a -- they have some sort of road rage
21 incident where they try to cut you off and they get
22 out -- you can't get out of the way and they come up and
23 start smashing your car up with a crowbar. You are in
24 an exposed situation inside your car. Do you think at
25 that point you have the ability to defend yourself,

June 5, 2017

Jury Voir Dire by Mr. Millan

1 deadly force to a person who has a crowbar?

2 Number 45, Mr. Gamboa?

3 VENIREPERSON 45: I thought it was a Texas
4 law that if you were in fear of your life, you could
5 defend yourself.

6 MR. MILLAN: You're right. It is Texas
7 law. I'm asking, do you agree with that?

8 VENIREPERSON 45: Yes.

9 MR. MILLAN: Self-defense, a person is
10 justified in using force against another when and to the
11 degree the actor reasonably believes the force is
12 immediately necessary to protect the actor against the
13 other's use or attempted use of unlawful force. Well,
14 let's take that a piece at a time.

15 This is the first time I'm doing this,
16 y'all, so bear with me. Let's try to blow it up.

17 The first thing I'm seeing here is when
18 and to the degree the actor reasonably believes. Let's
19 start with that. You have to have a reasonable belief;
20 right? So if you see somebody walking in front of your
21 house and they're kind of looking at your house and --
22 and maybe they're looking through the windows, maybe
23 they got on to your property a little bit and you're
24 wondering why -- why is this person on my property, but
25 not necessarily to -- in a way that seems like they're

June 5, 2017

Jury Voir Dire by Mr. Millan

1 aggressive, but -- well, maybe they aren't sure if
2 somebody lives there. Maybe they're trying to figure
3 out the value of the home, if they want to make an offer
4 on it. There could be a reason why other than them
5 being aggressive; right?

6 If you went out and just started beating
7 the person up, would that be -- do you think that that
8 would be reasonable under the circumstances?

9 (Panel responds)

10 MR. MILLAN: I agree with you. They have
11 to be doing something that is either use of force or you
12 immediately believe that that force is coming at you;
13 right? It says the force is immediately necessary;
14 right?

15 So the example where the person is running
16 at you with a crowbar and you're standing at the door
17 and they are maybe a few feet away from you, it's pretty
18 immediate, isn't it? You've got to make a quick
19 decision. And if you don't make the right decision, it
20 could be the end; right? So if -- and you don't want to
21 second-guess under those circumstances; right?

22 To protect the actor against the other's
23 use or attempted use of unlawful force. So the person
24 either has to be using force against you or attempting
25 to use force against you and, once again, immediately

June 5, 2017

Jury Voir Dire by Mr. Millan

1 necessary. So it's basically an attempt that is -- that
2 is really close to happening; right? Y'all could think
3 of a -- of a situation where it's necessary.

4 Somebody throws a punch at you. You block
5 the punch out of the way. In that immediate moment
6 afterwards, do you have a right to punch them back? In
7 the immediate moment when they're punching at you and
8 you're blocking the punch, do you think at that
9 particular moment you have a right to punch them? Fist
10 against fist, and it's immediate. Under the law of
11 self-defense, do you think that you have a right to
12 punch that person under those circumstances? How many
13 of you say yes? How many say no?

14 Mr. Gamboa?

15 VENIREPERSON 45: Yes, sir, if they hit
16 you once and they stop. That's not self-defense if you
17 hit them back. If they keep hitting you, then you can
18 defend yourself to make them stop. Once they stop,
19 that's it.

20 MR. MILLAN: Do you think you have to wait
21 until the second punch or --

22 VENIREPERSON 45: Yes.

23 MR. MILLAN: Okay. Thank you very much,
24 Mr. Gamboa.

25 And how many people agree with that, that

June 5, 2017

Jury Voir Dire by Mr. Millan

1 they have to keep hitting you before you can hit back?

2

3 UNIDENTIFIED VENIREPERSON: Depends on who
4 is the biggest.

5 MR. MILLAN: Well, no, that's actually --
6 thank you for bringing up that point because don't you
7 think that size has something to do with what is
8 reasonable -- what is reasonable force?

9 VENIREPERSON 3: Not necessarily.

10 MR. MILLAN: Not necessarily. Maybe,
11 maybe not. Say you've got -- you've got a, you know,
12 300 offensive -- NFL offensive lineman versus a
13 120-pound guy who is -- who is, you know, obviously very
14 weak. Say that 120-pound guy decides he needs to have a
15 weapon to defend himself against the 300-pound offensive
16 lineman.

17 Under those circumstances, could the force
18 that that 120-pound guy uses against the 300-pounder
19 be -- be reasonable, if he's being attacked?

20 So a lot of the factors come into play;
21 right? It's not necessarily fist against fist or bats
22 against bats or crowbars against crowbars or guns
23 against guns. It could be one side is obviously weaker
24 than the other and needs to use greater force to defend
25 themselves; right? Anybody disagree with that?

June 5, 2017

Jury Voir Dire by Mr. Millan

1 VENIREPERSON 36: I have a question.

2 MR. MILLAN: Ms. Cervantes, number 36.

3 VENIREPERSON 36: I work in a school
4 district. And if we have two kids that get into a
5 fistfight, it doesn't matter who started it. If you hit
6 back, y'all are both in trouble.

7 MR. MILLAN: There's interesting rules in
8 fighting in schools that don't take into account who the
9 primary aggressor is and I get that. We're not talking
10 about that. Those are special rules that involve
11 juveniles and school-related activities, but I get that.
12 I've dealt with that, but that's not what we're talking
13 about. Thank you.

14 This was brought up I thought very well by
15 Mr. Grell.

16 VENIREPERSON 18: Yeah, probably.

17 MR. MILLAN: Yes. It was an interesting
18 story and you brought up. I mean, I already have the
19 slide ready to go. I didn't have to make it up. You
20 talked about it.

21 In general, when you're talking about a
22 family violence situation that involves a man and a
23 woman, Mr. Grell, do you think it's -- it's odd that --
24 that a woman would get the benefit of the doubt in a
25 family violence situation?

June 5, 2017

Jury Voir Dire by Mr. Millan

1 VENIREPERSON 18: Yeah, because I've seen
2 it happen.

3 MR. MILLAN: Does anybody disagree with
4 that and say, you know what, that's not true, that women
5 get the benefit of the doubt in a family violence
6 situation. I'm not saying it's right or wrong. Every
7 situation is different. But just on average, is that
8 outside the realm of what is rational and -- and what
9 you know?

10 Okay. Sometimes I get people arguing with
11 me on this one and we get into it, but everybody agrees
12 with -- with just the general premise that, you know,
13 it's not weird that -- that in some situations the woman
14 is going to be given the benefit of the doubt? Okay.
15 That was easy.

16 The State talked about this one, whether
17 you served on the jury, and I'm not going to -- I think
18 I got everybody's answers on that. Everybody who has
19 served on a criminal jury did raise their hands earlier;
20 right?

21 Okay. The lone holdout. Everybody
22 knows -- knows where that picture is from?

23 UNIDENTIFIED VENIREPERSON: 12 Angry Men.

24 MR. MILLAN: 12 Angry Men, my favorite
25 movie.

June 5, 2017

Jury Voir Dire by Mr. Millan

1 Anyway, for anyone who doesn't know what
2 this movie is about, it's essentially one juror, Jimmy
3 Stewart -- in the old version, it's Jimmy Stewart. He
4 was the lone holdout. And I -- and he -- he starts
5 questioning the evidence that is put forward in this
6 case. The other 11 want to get out of there: He's
7 guilty, let's get out of here.

8 What I'm asking you-all is that if you
9 have an -- in good conscience believe that -- whether
10 you believe guilt or innocence, if you -- if you are --
11 in good conscience believe what you believe, don't let
12 yourself get bullied. Be -- be strong.

13 I mean, you know, there are a few things
14 that -- that the -- that are asked of us civically. One
15 of them is to serve on a jury and -- and, you know, look
16 at this as an opportunity to perform your civic duty and
17 perform it at the best possible level you can, like at
18 anything else in life.

19 You know, look at the evidence -- I know
20 you will, but I just really want this to hit home.
21 Stick to your conscience, don't -- don't let yourself
22 just make a quick decision that you regret later. Look
23 at it closely.

24 I want to take issue with one thing and
25 I -- I was going to bring this up earlier, the Fifth

June 5, 2017

Jury Voir Dire by Mr. Millan

1 Amendment thing. Did anybody else have a problem with
2 the cloak of invisibility thing, the Harry Potter cloak
3 of invisibility thing? I know I have a real problem
4 with that analogy to the Fifth Amendment and I'll tell
5 you why.

6 In Harry Potter, he's putting that cloak
7 of invisibility on himself and he's choosing to open it
8 up and show his head. The Fifth Amendment is not a
9 cloak of invisibility for an individual. It is a right
10 that is given to all of us by the constitution. So that
11 cloak of invisibility is on everyone until they're in a
12 situation like this. Okay. It's not one person putting
13 the cloak of invisibility on themselves. It is a
14 constitutional right that is afforded to every single
15 one of us. Every single one of us has a cloak of
16 invisibility that is given to us.

17 I went through this pretty quick. The
18 State did a good job of covering all of this stuff. One
19 thing I do want to tell you is that there are times
20 during the jury trial that I get kind of excited. I
21 may, you know, ask some hard questions and I may come
22 across as kind of a jerk and -- and if you feel that way
23 and you want -- and you get upset with me for the way I
24 ask a question or did something, take it up with me
25 after the trial. Don't take it out on the defendant.

1 You -- you have plenty of time after the trial to talk
2 to me and have a -- if you have an issue with me, we can
3 discuss it person to person.

4 I look forward to spending some time with
5 the 12 of you who are picked for this jury trial. And I
6 will -- and I want to ask any of y'all if you have any
7 questions before we wrap things up and go to -- to the
8 choosing of the 12 who will be sitting there.

9 This is going to be your last chance. If
10 you can't be fair, tell me right now because you -- you
11 know, you may end up sitting in that box and wondering
12 why -- how did I allow myself to do this? Any
13 questions?

14 All right. Thank you very much for your
15 time. I look forward to spending some time with you.
16 Thank you.

17 THE COURT: Okay. Ladies and gentlemen,
18 if you would, to begin, let's just pass those cards to
19 the center aisle and then Adam will come by and pick
20 them up on behalf of the 433rd. Right?

21 THE BAILIFF: Yes, sir. Absolutely.

22 THE COURT: If you'll just kind of keep
23 quiet just for a little bit so that the attorneys can
24 come up here, we need to identify some people that we
25 may need to speak with a little bit further. We'll

1 identify those people and we'll give everybody else a
2 break.

3 Counsel, if y'all can approach.

4 (At the bench, on the record)

5 THE COURT: Mr. Millan, if you'll recall,
6 what I like to do is just go down the list with the
7 State, people that they think --

8 MR. MILLAN: Do you want to start first?

9 MS. DOYER: I have seat number 2, Polson.

10 MR. MILLAN: Yes. Agreed.

11 THE COURT: If you say yes, I'm going to
12 assume for the purposes of the record that that's an
13 agreement and that will help.

14 MR. MILLAN: Yes, Your Honor.

15 THE COURT: Just let me know if you would
16 like to speak with somebody rather than agreeing as we
17 go down the list. If I don't hear that you want to
18 speak to them, I'm going to assume it's an agreed
19 strike.

20 MS. DOYER: Seat number 4, Campos.

21 MR. MILLAN: Agreed.

22 MS. DOYER: Seat 15, Tilley.

23 MR. MILLAN: Agreed.

24 MS. DOYER: Seats 16, 17 and 18, also.

25 MR. MILLAN: Agreed on all of them.

1 MS. DOYER: Seat 21, Allison.

2 MR. MILLAN: Agreed.

3 MS. DOYER: Seat 23, Booze1.

4 MR. MILLAN: Not 22? Okay.

5 MS. DOYER: 23, Booze1.

6 MR. MILLAN: Agreed.

7 MS. DOYER: Seat 24, Whitley.

8 MR. MILLAN: Agreed.

9 MS. DOYER: I have 146 -- or 26 coming up.

10 She has an issue that she wanted to talk about.

11 MR. MILLAN: Approach.

12 MS. DOYER: And on the right side, seat
13 29, Sowell.

14 MR. MILLAN: Agreed.

15 MS. DOYER: Seat 31, Womble.

16 MR. MILLAN: Agreed.

17 THE COURT: Seat 32, Cruz.

18 MR. MILLAN: Agreed.

19 MS. DOYER: Seat 30, Cervantes.

20 MR. MILLAN: 30?

21 MS. DOYER: I'm sorry, 36.

22 MR. MILLAN: Agreed.

23 MS. DOYER: Schreiber, 43.

24 MR. MILLAN: Agreed.

25 MS. DOYER: And then on the back I had 50

1 and 51, Thrasher and Lorah.

2 MR. MILLAN: Agreed and agreed.

3 THE COURT: Okay. Just back to the top,
4 Mr. Millan, you can take the same route and then --

5 MR. MILLAN: Let me scratch my -- hers out
6 first and make sure because there's some I have
7 accepted. I got all messed up.

8 Okay. I also have 22, Mr. Loper. He said
9 that based on honesty of the officer, that just in
10 general he thinks officers are more honest. I don't
11 think that -- that's police versus civilian testimony.

12 MS. DOYER: I'd like to speak to him.

13 MR. MILLAN: I would actually like to call
14 up number 25, Mr. Moon. I didn't want to ask him any
15 questions about how he knew Mr. Porter because I was
16 afraid what his answer was going to be.

17 MS. DOYER: I would agree to excuse him.
18 He works in the jail.

19 THE COURT: What does that mean? Oh, you
20 think he --

21 MS. DOYER: Yes, sir. I think he knows
22 about Mr. Porter.

23 THE COURT: Okay.

24 MR. MILLAN: I'll agree.

25 THE COURT: Does he work in the jail or is

1 he on --

2 MS. DOYER: I had that he was a deputy and
3 that he was in the jail, but --

4 THE CLERK: It's Captain Moon. He's in
5 administration.

6 THE COURT: We'll strike him.

7 MR. MILLAN: I had number 37, Mr. Hurley,
8 also issues with police versus civilian testimony.

9 MS. DOYER: I'd like to speak to him,
10 also.

11 MR. MILLAN: Number 44, she talked about
12 how her -- her dad was prosecuted and she wasn't sure if
13 she could be fair. I don't know how much further than
14 that, but I think we need to call her up at a minimum.
15 And that's it, Judge. So to approach, Judge --

16 THE COURT: We just have four.

17 MR. MILLAN: I've got 22, 26, 37 and
18 then --

19 MS. DOYER: And then 44.

20 MR. MILLAN: 44.

21 (At the bench, concluded)

22 THE COURT: Okay. Looks like we will only
23 be needing to speak with four of you. And then after we
24 finish that, the attorneys will be making their strikes.
25 And let's just -- if everybody will be at the doorway --

1 coming back into the courtroom at about 20 until 3:00,
2 that will be about 30, 35 minutes. That will give us
3 time to do our work as well as the attorneys to make
4 their strikes. The clerk can then compose the 12 and
5 we'll go from there.

6 I do need to speak with Randy Loper,
7 Shawna Jacobs, Brian Hurley and Clair Luttrell. If the
8 four of you will remain, everybody can else can be on a
9 break for about 30 minutes. Thank you.

10 (Panel leaves the courtroom)

11 THE COURT: Mr. Loper, if you could just
12 come on up.

13 (At the bench, on the record)

14 THE COURT: How are you doing, sir?

15 VENIREPERSON 22: Good.

16 THE COURT: Listen, I just need to talk to
17 you a little bit about your position regarding the
18 believability, so to speak, if you will, of police
19 officers.

20 VENIREPERSON 22: Yes, sir.

21 THE COURT: And just as -- we're not just
22 talking about somebody who is being honest. We're also
23 talking about how people perceive or relate -- and then
24 relate things, how -- and so is it just because of your
25 experience as a police officer that no matter what,

1 every police officer is always going to be more
2 believable regardless of whether it's an honesty issue
3 or just how they perceive something?

4 VENIREPERSON 22: No, sir. I would look
5 at all of the evidence. I would look at the case and
6 everything. And what I meant to say was if it boiled
7 down to where I had to make a decision who I felt was
8 telling the truth, maybe the evidence wasn't swaying
9 either way, I would feel more likely to believe the
10 police officer.

11 I would look at the evidence. And if the
12 evidence and everything else, you know, showed that the
13 officer wasn't telling the truth, I would have no
14 problem with that. That's just the way the question
15 was --

16 THE COURT: I got you.

17 VENIREPERSON 22: You know what I'm
18 saying?

19 THE COURT: And again, it's not
20 necessarily whether somebody is telling the truth. It
21 may just be that they perceived it one way and somebody
22 else perceived it a different way.

23 VENIREPERSON 22: I'm just being honest.

24 THE COURT: Any questions from either of
25 you guys?

1 MR. MILLAN: Would it be fair to say that
2 an officer is going to have a leg up over a civilian
3 witness in your eyes?

4 VENIREPERSON 22: It depends on the
5 circumstances of the evidence. Like I said, if -- if
6 they both came in to court and there was no evidence and
7 there was nothing else, I would have a tendency to
8 believe a police officer because I -- because of the
9 training and their experience and -- and because I was
10 one. And I always feel that they would be honest and
11 credible.

12 MS. DOYER: Mr. Loper, would that all be
13 based on things that you would know after they testified
14 as far training and experience?

15 VENIREPERSON 22: With all the evidence
16 and everything presented to the Court. Now, I would
17 know -- with my experience, I would probably know a bad
18 police officer if I saw one, too.

19 THE COURT: Okay. Thank you, sir.
20 Appreciate it.

21 VENIREPERSON 22: Okay.

22 MR. MILLAN: Judge, I move to strike for
23 cause.

24 THE COURT: Denied.

25 Ms. Jacobs?

1 Again, I think it's just -- everything is
2 based upon the circumstances of the evidence. That's
3 what he said.

4 How are you doing? I think you just
5 wanted to let us know a little bit --

6 VENIREPERSON 26: About the
7 unsubstantiated claims of child abuse. It was more of
8 a -- my -- I was getting married. My mom wanted to
9 control me still. I was in my thirties, but she wanted
10 to control me, staying there and taking care of her, and
11 so she said that I abused my child.

12 And then I had moved to Virginia and left
13 my kids there because I didn't have a job yet. And so
14 when I went back to get them, my mom pulled the abuse
15 card.

16 THE COURT: Okay. And are you able to
17 just, regardless of those details -- and I apologize
18 that you had to deal with that. But regardless of those
19 details, do you understand that that situation has no
20 impact one way or the other?

21 VENIREPERSON 26: No, it doesn't, but I
22 was just being honest.

23 THE COURT: I gotcha. And I appreciate
24 you bringing it up to us. We're close to the vest here
25 as privately as we possibly can and -- but so is it

1 clear in your mind that that won't have any impact on
2 your decision --

3 VENIREPERSON 26: No, sir, it won't have
4 no impact.

5 THE COURT: -- if you're on this jury?
6 Okay. Thank you. I appreciate it.

7 Mr. Hurley?

8 I can't remember, what was the issue,
9 Mr. Millan, that you wanted to talk to -- wanted to
10 speak with Mr. Hurley about? Was it some --

11 MR. MILLAN: I believe it was police
12 versus civilian.

13 MR. MATIAS: What's your number?

14 VENIREPERSON 47: 47.

15 MR. MILLAN: Police versus civilian.

16 THE COURT: Just in regard to every
17 witness who walks in the back door kind of with a --
18 kind of even-steven -- in other words, the Verizon man,
19 even though he walks in, he may or may not be the best
20 cell phone witness, so to speak.

21 VENIREPERSON 47: Yes.

22 THE COURT: Police officers are different.
23 Priests are different.

24 VENIREPERSON 47: Right.

25 THE COURT: And so does somebody with a

1 badge automatically have a halo over their head and
2 you're going to believe every word they say? That's a
3 human nature thing --

4 VENIREPERSON 47: Yeah.

5 THE COURT: -- or are you willing to wait
6 and see their training and experience as well as how and
7 why they perceive something to be true that they're
8 testifying about, or does -- do they -- automatically
9 every word that comes out of their mouth, is it going to
10 be true in your mind? And that's okay.

11 VENIREPERSON 47: I wouldn't say
12 automatically, you know, every word just rings truth,
13 but there would just be more -- I would be, you know,
14 more open to hearing that side, I guess. I don't know
15 really how to say it, but it wouldn't be like everything
16 is -- I take it as the truth. But there's definitely,
17 you know, a -- an image for police officers and that's
18 just how I was raised. My uncle was a police officer
19 and so I have that perception of them.

20 THE COURT: Any questions?

21 MR. MILLAN: Would you be biased in favor
22 of a police officer as a witness versus the civilian
23 witness?

24 VENIREPERSON 47: No. I would still want
25 to hear -- because like I said, it wouldn't be

1 everything rings true, but I would have that image
2 because like I said, that's how I've been raised.

3 MR. MILLAN: Would you be more likely to
4 believe that an officer is telling the truth more than a
5 civilian witness without knowing anything about them?

6 VENIREPERSON 47: Yeah.

7 MS. DOYER: Would you base that on your
8 prior experience with your family or would that be based
9 on after they testify and you hear their training and
10 experience and qualifications?

11 VENIREPERSON 47: I mean, I think it would
12 just be as a whole. It's just my perception of police
13 officers. I don't think it even has anything to do with
14 my family. It's just how I've been raised, and I would
15 definitely have that --

16 THE COURT: I got you.

17 VENIREPERSON 47: -- perception.

18 THE COURT: I appreciate your candor. I'm
19 going to be -- I'm going to let you go. You don't have
20 to come back.

21 VENIREPERSON 47: Good.

22 THE COURT: I appreciate it. Thank you.

23 MR. MILLAN: Thank you.

24 THE COURT: I'm presuming there's a
25 challenge for cause. There's a distinction there

1 between the way he puts it versus the first one.

2 And, Mr. Luttrell -- is it Clair?

3 VENIREPERSON 44: Yes.

4 THE COURT: Did you have a question just
5 regarding some prior allegations of family violence? I
6 don't know if it was --

7 MR. MILLAN: Yeah, it had to do with -- it
8 is when the State was talking to you about --

9 VENIREPERSON 44: I'm 44.

10 MR. MILLAN: It had to do with -- and I
11 believe you said that you had -- your dad was prosecuted
12 with child abuse when you were younger.

13 VENIREPERSON 44: My dad was a violent
14 alcoholic.

15 MR. MILLAN: Okay. And you were asked
16 whether or not that experience would make it to where
17 you couldn't be fair in a case like this and you said
18 you weren't sure.

19 VENIREPERSON 44: It's opening up wounds
20 that's been buried for years.

21 THE COURT: I understand. This may not be
22 the best case.

23 MR. MILLAN: Would this -- this may not be
24 the best case for you?

25 VENIREPERSON 44: Yeah.

1 THE COURT: Okay. I appreciate it. I'm
2 going to let you go. I'm sorry you had to experience
3 that, but thank you, sir. You don't need to come back.

4 VENIREPERSON 44: Okay.

5 MR. MILLAN: Okay.

6 THE COURT: All right. If my count is
7 correct, to get to the range --

8 MR. MILLAN: I think we had 34.

9 THE COURT: So the initial range would go
10 through seat number 49, Kathryn Martinez; is that
11 correct?

12 THE CLERK: Yes, sir.

13 THE COURT: And I think, just to
14 double-check, we did allow Mr. Luttrell to go and y'all
15 agreed on Schreiber. Then I struck Hurley with a
16 defense challenge and agreed on Cervantes, Cruz -- I'm
17 going backwards -- Womble, Sowell.

18 And on the -- on the previous page, again
19 from the bottom moving upwards, we agreed on Scott Moon,
20 Justin Whitley, Jamie Boozel, Freda Allison, Ronald
21 Grell, Clayton Wiatrek, Jarod Criddle, Jan Tilley,
22 Stephanie Campos and Dennis Polson. Is that correct?

23 MS. DOYER: Yes, sir.

24 THE COURT: And so -- I mean, if y'all
25 think that it's smart to have an alternate, we could let

1 y'all just each try to make a strike on either of the
2 last two. If you strike both of them, we won't have an
3 alternate.

4 MR. MILLAN: That's right.

5 MS. DOYER: Okay. So one each, sir?

6 THE COURT: Yes, but just on those two
7 down there.

8 MR. MILLAN: Okay.

9 THE COURT: And you can't use your
10 original ten obviously outside the zone.

11 MR. MILLAN: Understood.

12 THE COURT: Does everybody agree that --
13 technically speaking, that's not how the rules read.
14 Are you okay with doing it that way?

15 MR. MILLAN: I'm okay with doing it that
16 way.

17 THE COURT: Okay.

18 MS. DOYER: Okay. James, we'll let you
19 have the room.

20 MR. MILLAN: Okay. Thanks.

21 (Recess taken)

22 (Open court, defendant present, no panel)

23 THE COURT: Any objection to the
24 composition of the jury?

25 MR. MILLAN: No objection from the

1 defense, Your Honor.

2 THE COURT: Okay. Then we can let them on
3 in.

4 (Panel enters courtroom)

5 THE COURT: Hopefully we've got everybody.
6 As your name is called, if you'll come on down. It's
7 kind of like The Price Is Right. If you'd just come up
8 here to the jury box, I'd appreciate it.

9 Madam Clerk?

10 THE CLERK: If I could have Billy
11 Hilliard, Michael Cook, Jennifer Talley, Julian Casarez,
12 David Pfaff, Christopher Schultz, Harold Fieseler,
13 Sandra Colie, Wendy Walker, Dawn Choske, Michael McCabe,
14 Aaron Garcia and Alexandria Lawton.

15 THE COURT: Okay. Ladies and gentlemen, I
16 hope that everybody can see how important it is to
17 respond to that jury summons when it comes in the mail.

18 And we've got one seat up on the front row
19 there, I apologize.

20 Y'all can be all be seated. Thank you.

21 Y'all can see how important it is to
22 protect everybody's rights -- your own, your neighbors',
23 your family members', this defendant's rights -- to make
24 sure we have a good cross-section of the community from
25 which to select a fair and impartial jury.

1 As well, those folks that are in the
2 military, such that their effort, their sacrifice, if
3 nothing more than being away from their family months on
4 end, is not without any moment to be appreciated. So
5 thank you for just being here out of respect for them as
6 well.

7 And if you do need an excuse for where
8 you've been today for a boss or a spouse or anybody
9 else, you can get that down -- out the door to the right
10 and onto the carpeted hallway. On the left will be Room
11 304. I do thank you for being here and you are excused.
12 Thank you.

13 (Panel released)

14 THE COURT: If y'all want to move your
15 chairs around, you may.

16 Y'all have just kind of a beginning set of
17 instructions. I'm not going to endeavor to read them to
18 you verbatim. However, I will just ask you to take them
19 with you and to glance at them and try to obviously
20 follow these instructions to you as jurors.

21 The gist of this entire legal sheet of
22 paper is such that all the testimony that you are to
23 receive has to come to you here in this courtroom and
24 not from any outside source. Number one, it would -- if
25 one juror went and got something from outside the

1 courtroom, the others wouldn't be privy to it; right?
2 And so that would be obviously improper.

3 And also, the attorneys should have the
4 opportunity to properly vet, if you will, any potential
5 evidence such that there might be objections, if need
6 be, to be raised and rulings by the Court. And without
7 that process as well, we can't, you know, have complete,
8 fair and impartial proper trial proceedings. And that's
9 the gist of the entirety of these rules such that you're
10 not influenced by anything beyond this courtroom.

11 And so number one is just, in general,
12 again, not to use any electronic devices and not to go
13 on to, you know, any social media, blogging, those kinds
14 of things, no Google Earth. Even if you hear about a
15 particular location, obviously we don't know when that
16 picture was taken from Google Earth relative to any
17 event. I mean there's multiple, multiple reasons why it
18 would be inappropriate for anybody to do anything like
19 that.

20 I would just suggest to you, don't go home
21 and get on, say, any kind of social media, "guess what
22 happened to me "today," because what's going to happen?
23 That's going to invoke a response: "What's the case
24 about" and -- and so it would -- we don't need that
25 dialogue, that -- because that may or may not be

1 accurate and we just don't need to start putting those
2 things out there.

3 As well, number two is just to avoid
4 looking like you're friendly to one side or the other.
5 Just other than casual greetings, avoid conversations
6 with the folks that are involved here in this trial.

7 Do not to accept any rides or favors.
8 That's pretty obvious, even change for the Coke machine,
9 is number three. And number four, again, is kind of
10 covered along with number one about social media and
11 those kinds of things as we've discussed.

12 Number five is not to talk to anyone about
13 the case during the trial, not even amongst yourselves.
14 Even when you are deliberating, that you should do so
15 only when all 12 are present. You can talk about how
16 strange it is that we get these little showers every day
17 for the last week or whatever, but you can't talk about
18 the case unless all 12 of you are together and after
19 you've heard all of the instructions and the arguments.
20 It's only then that you can go talk about and deliberate
21 to try to reach a verdict.

22 And number six is just kind of a laundry
23 list of different ways in which you should not do extra
24 things. Don't even look up definitions in Webster's or
25 anywhere else. If there's a particular definition that

1 I'm required to give you as a matter of law, I will give
2 it to you. If there's not a definition in the charge
3 that we give you, you're entitled to use your own
4 current, common, ordinary usage and understanding of
5 that word.

6 It might be different amongst jurors, but
7 that's okay. The law has decided what definitions
8 that -- should be given. And if there's not one, again,
9 you just use your ordinary meaning. But as well, don't
10 look up any terms, legal or otherwise. I think you
11 can -- you can understand that.

12 Number seven is not to tell other jurors
13 of your own experiences, et cetera. Obviously everybody
14 comes to the table with the filter through which you're
15 going to view all of the evidence. That filter is yours
16 and that filter should not be cast upon somebody else.
17 And so to say to the other jurors in deliberations,
18 "Well, because I've experienced this, this is how I see
19 the evidence and you should agree with me," that's --
20 I'm being rather simplistic about it, but I think you
21 understand what I mean by that.

22 And then number eight is in regard to
23 note-taking. If you would like to take notes, we will
24 allow you to do so. We have some little tablets back
25 here that you can use. What I would suggest -- just a

1 couple of things here, these instructions about the
2 notes, that you do need to pay attention to the
3 testimony as it's being provided because that's the one
4 chance you get to hear the witness testimony. We can't
5 come back in later and say, I need have to that
6 testimony between 2:45 and 3:00 reread to us. We just
7 can't do that. The law doesn't allow it beyond that.

8 Don't let note-taking distract you, but
9 also understand that like myself, I might make an
10 error -- scrivener's error as I took something down.
11 That's why we don't share notes because one juror may
12 see things or hear something a little bit different.
13 You can say obviously when you're talking and
14 deliberating back there, this is what I recall.

15 But also in passing, you can't pass notes
16 around because you might be using an abbreviation that
17 somebody else might not understand. Don't give any more
18 or less weight simply to the -- or to the arguments of
19 another juror simply because that juror did or did not
20 take notes on a given subject or given witness or at
21 all. We will ultimately end up destroying all of those
22 at the end of the day.

23 At the conclusion of the evidence as well,
24 we'll submit to you a written charge. And since you'll
25 need to consider all of the evidence admitted by me,

1 it's important, again, to pay close attention.

2 I trust that everybody is going to follow
3 these rules, but you should know that if we have to, we
4 can have sworn testimony regarding any violations of
5 these rules. So if you believe that there is a
6 violation of the rules, just -- just make sure, the best
7 you can, that it -- it stops. And if it for some reason
8 continues, if you'll let Adam know immediately, we'll
9 deal with it.

10 What I'm going to do probably here in just
11 a second is turn you loose with Adam so that he can go
12 back and he -- I'm sure he probably just wants to get
13 your best contact information just solely for our
14 purposes during this trial.

15 But as well, we're going to try to start
16 the evidence I think today and to -- to be as efficient
17 with everybody's time. We'll probably stop a little bit
18 before 5:00 or so every day and let everybody get on
19 about their business.

20 Typically we will work 9:00 to 5:00.
21 We'll have a break in the morning, lunch break, maybe a
22 break or two in the afternoon so that everybody -- make
23 sure everybody is still staying with us, staying awake,
24 et cetera.

25 The temperature does fluctuate here in

1 these rooms. So if you're susceptible to that -- if you
2 need something today, let us know. But otherwise, you
3 might bring a light wrap or whatever you can take on or
4 off. Adam makes some pretty decent coffee back here.

5 THE BAILIFF: I try.

6 THE COURT: You're welcome to bring a cup
7 in here with you today. Tomorrow, y'all are in such
8 close quarters, that if you've got a cup with a lid on
9 it, it might be beneficial just to make sure nobody gets
10 spilled on with hot drink or whatever. But you can also
11 bring soda water, whatever you so desire, light snack if
12 you need it.

13 Unless y'all have any questions of me
14 immediately, I'm -- I'll let Adam take you back there.
15 We may have a couple of matters we need to take up in
16 here, but we're going to get started here shortly.
17 Thank you.

18 (Jury leaves courtroom)

19 THE COURT: All right. Y'all can be
20 seated.

21 The motion in limine, do we need to have
22 anything more formal put on the record about that? I
23 think James agreed before he goes into anything
24 regarding impeachment of the --

25 MR. MILLAN: Oh, absolutely, Judge. I'll

1 approach the bench and let you know if I think that
2 we've gotten to that point where there's something I
3 think should be admissible.

4 MS. DOYER: The other -- the motion also
5 covers any self-serving hearsay of the defendant.
6 That's the other portion of the motion that we didn't
7 address earlier.

8 MR. MILLAN: Self-serving hearsay in
9 regards to anything he said to the police?

10 MS. DOYER: Yes.

11 THE COURT: If you will, just refrain from
12 asking questions about what the defendant may have told
13 you. It sounds to me like it's a self-defense case, so
14 that's probably -- or some kind of defensive issue and
15 so --

16 MR. MILLAN: Right. Well, I mean, I --
17 anything that the defendant said can and will be used
18 against him. It seems that anything that the defendant
19 said to the officers is going to -- all right.

20 THE COURT: If it's hearsay, it's hearsay.

21 MR. MILLAN: All right.

22 MS. DOYER: So both of those will be
23 granted, sir?

24 THE COURT: Yes.

25 MS. DOYER: Thank you.

1 THE COURT: If there's an exception, just
2 approach. That's just a motion in limine.

3 (Recess taken)

4 (Open court, defendant and jury present)

5 THE COURT: Okay. Everybody can be
6 seated.

7 All right. Are we ready with arraignment?

8 MS. DOYER: Yes, Your Honor.

9 THE COURT: Okay. If the defendant would
10 please rise.

11 MS. DOYER: Cause Number CR2016-233, grand
12 jury date April 13th, 2016. State of Texas versus Derek
13 Dale Porter, assault family violence with prior
14 conviction, in the 207th Judicial District Court.

15 In the name and by the authority of the
16 State of Texas, the grand jurors, duly selected,
17 organized, sworn and empaneled as such for the County of
18 Comal, the State of Texas, at the January term A.D.
19 2016, in the 207th Judicial District Court for said
20 county, upon their oaths, present in and to said Court
21 that in the county and state aforesaid, and before the
22 presentment of this indictment, on or about the 30th day
23 of November, 2015, Derek Dale Porter, hereinafter styled
24 defendant, did then and there intentionally, knowingly
25 or recklessly cause bodily injury to Georganne Shirley,

1 a person whose relationship to or association with the
2 defendant is described by Section 71.0021(b), Section
3 71.003 or Section 71.005 of the Texas Family Code by
4 striking the said Georganne Shirley on her head with the
5 hand or hands of the said Derek Dale Porter by placing
6 Georganne Shirley in a chokehold with the arm of the
7 said Derek Dale Porter and by pulling the hair of the
8 said Georganne Shirley with the hand or hands of the
9 said Derek Dale Porter.

10 And it is further presented in and to said
11 Court that before the commission of the offense alleged
12 above, Derek Dale Porter had previously been convicted
13 of an offense under Section 22.01 of the Texas Penal
14 Code against a person whose relationship with the said
15 Derek Dale Porter was described by Section 71.0021(b),
16 Section 71.003 or Section 71.005 of the Texas Family
17 Code, to-wit, on or about the 2nd day of February, 2012,
18 in the 22nd District Court of Hays County, Texas, in
19 Case Number CR-11-0347, the defendant was convicted of
20 the offense of assault family violence which was alleged
21 to have been committed against LaToya Branecky, a person
22 who was a member of the defendant's family or household.

23 On or about the 2nd day of February, 2012,
24 in the 22nd District Court of Hays County, Texas, in
25 Case Number CR-11-03489, the defendant was convicted of

1 the offense assault family violence, which was alleged
2 to have been committed against the LaToya Branecky, a
3 person who was a member of the defendant's family or
4 household. Against the peace and dignity of the State,
5 signed the foreperson of the grand jury.

6 THE COURT: To that charge the defendant
7 pleads guilty or not guilty?

8 THE DEFENDANT: Not guilty.

9 THE COURT: Thank you. You may be seated.

10 Ladies and gentlemen, at this time the
11 parties will have the opportunity to give you an opening
12 statement that is not evidence in and of itself. It's
13 merely an outline to where they believe the evidence is
14 going to take you.

15 The defense will have the opportunity to
16 open immediately following the State's opening or they
17 can defer until a later time.

18 At this time, Ms. Kilday?

19 MS. KILDAY: Thank you, Your Honor. May
20 it please the Court.

21 THE COURT: Yes, ma'am.

22 OPENING STATEMENT

23 MS. KILDAY: If you want to see the real
24 measure of a man, give him power. Does he listen? Is
25 he patient, or does he physically dominate and incite

1 fear?

2 As you remember from voir dire, my name is
3 Kiera Kilday. Along with Jackie, we represent the State
4 of Texas against the defendant, Derek Porter, a man who
5 the evidence will show used his power to cause pain.

6 Now, this evidence all goes back -- you're
7 going to learn that the defendant was in a romantic
8 relationship with a woman named Georganne Shirley, and
9 Ms. Shirley is here. She will testify for you. You'll
10 learn it was somewhat of a rocky relationship,
11 tumultuous. She wanted out. At some point in time she
12 decides to leave. She moves here to Comal. She was
13 living with a friend out by Canyon Lake area.

14 Well, in late November 2015, the defendant
15 shows up at that residence. Shirley will testify, she
16 didn't want him there. And on the morning of November
17 30th, 2015, she wakes up and she still does not want the
18 defendant there. He's asleep in the room. She decides
19 to prepare breakfast. She goes into the bedroom telling
20 him, once again, you need to leave.

21 Now, here's where things change because he
22 could have listened. He could have been patient. The
23 evidence will show that's not what he did. And in fact,
24 by him asking -- by her asking him to leave, he becomes
25 enraged. He grabs her by the top of the head and holds

1 her in a chokehold. And in the meantime, he starts
2 striking her on the right side of her head all the while
3 she's screaming, call the police, call the police.

4 And her roommate is right next door, hears
5 the whole thing happening: Call the police. Call the
6 police. And as she's calling out, he yanks her around
7 the room and drags her around.

8 Now, human beings are remarkably resilient
9 and Ms. Shirley is no different. We all have fight or
10 flight responses. But when you're locked in a headlock
11 and you've got nowhere to fly to, well, you're going to
12 fight back. That's exactly what Ms. Shirley did. She
13 turns her head and clamps down on his shoulder, right
14 here on the left inside of his arm. He let's go.

15 Fortunately the roommate did go to a
16 neighbor's house. He calls the police and the sheriff's
17 deputies arrive. You're going to hear from the deputies
18 who arrived at the scene, how they walked into the
19 house. Ms. Shirley comes out, thank you, thank you,
20 you're here.

21 The deputies will describe for you that
22 the defendant is laying down and appears to be asleep in
23 the room, but they call out and he pops up fully
24 dressed, shirt on, jeans on, shoes on. He gets to the
25 side of the bed, ties his shoes. All the while the

1 deputies are saying, who are you? What's going on?
2 They're trying to identify him.

3 The defendant walks out of the room and
4 into the kitchen, takes off, runs out of the house and
5 down the road. Police -- well, the deputies chase after
6 him. They sprint, too. And he would have gotten
7 further if it weren't for one of Ms. Shirley's neighbors
8 who happens to be an off-duty Austin Police Department
9 officer, Joseph Lorette.

10 Mr. Lorette will testify to -- that when he
11 pulls up to the corner, he's in his truck and he sees
12 the defendant running away from the two sheriff's
13 deputies and he decides to help. He gets out of his car
14 and he tackles the defendant to the ground. The
15 sheriff's deputies apprehend him.

16 Once the scene calms down, they're able to
17 assess the scene and assess Ms. Shirley's injuries.
18 They'll describe for you the red marks on top of her
19 head which corroborate with hair pulling; the red marks
20 on the side of her head, how there were lumps from
21 swelling on the back and on the right side of her head;
22 and slight redness around the base of her neck.

23 Now, we -- as the State, we have the
24 burden of proving to you beyond a reasonable doubt that
25 that man intentionally, knowingly, recklessly caused

1 pain, bodily injury to Ms. Shirley when he locked her in
2 a chokehold and punched her and pulled her hair.

3 We also need to prove that we were in the
4 right place, where the jurisdiction is proper. And so
5 you're going to hear testimony and evidence about a
6 prior conviction for family violence, I guess a
7 different individual, LaToya Branecky, that the
8 defendant was convicted for previously prior to us being
9 here today.

10 Derek Dale Porter is a dangerous man. He
11 used his power to cause pain. At the conclusion of all
12 of the evidence and testimony in this trial, we're going
13 to ask you to find him guilty. Thank you.

14 THE COURT: Do you wish to open now?

15 MR. MILLAN: We'll reserve opening.

16 THE COURT: Okay. Thank you.

17 Ladies and gentlemen, I do need to get you
18 to do one other thing briefly before we proceed. If
19 everybody will just raise their right hands to take a
20 little bit different oath.

21 (Jury sworn)

22 THE COURT: Does anybody feel unable to
23 take that oath or make such an affirmation? Okay.
24 Thank you.

25 I sent the clerk packing before I had her

1 do that -- or I allowed her to go back to our office.

2 MR. MILLAN: I'm sorry, we're going to
3 need to invoke the rule.

4 THE COURT: If there are any witnesses,
5 State, I presume y'all can make sure they're not
6 speaking about the case.

7 First witness?

8 MS. DOYER: State calls Georganne Shirley.

9 THE COURT: Good afternoon. I just need
10 to get you to raise your right hand.

11 (Witness sworn)

12 THE COURT: Thank you. You may be seated.

13 GEORGANNE SHIRLEY,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. DOYER:

17 Q. Ms. Shirley, could you please tell us your name
18 for the record.

19 A. Georganne Bernice Shirley.

20 Q. I'm going to need you to scoot real close to
21 that mike for me. Say that again.

22 A. Georganne Bernice Shirley.

23 Q. And, Georganne, can you spell Georganne for our
24 court reporter here?

25 A. G-E-O-R-G-A-N-N-E.

1 Q. Now, Ms. Shirley, where are you from
2 originally?

3 A. Wimberley, Texas.

4 Q. And how long have you lived in Wimberley?

5 A. On and off for 45 years.

6 Q. Do you have any children?

7 A. Yes.

8 Q. How many children do you have?

9 A. Three.

10 Q. And, Ms. Shirley, do you know an individual
11 named Derek Porter?

12 A. Yes, I do.

13 Q. How do you know Derek Porter?

14 A. He is my ex-boyfriend.

15 Q. When did you first meet Derek Porter?

16 A. I can't recall. It's been quite a while back,
17 probably five years ago.

18 Q. How long after you met him did your
19 relationship become a romantic relationship?

20 A. I would say three months into meeting him.

21 Q. How long were the two of you in a romantic
22 relationship?

23 A. A little over two years.

24 Q. When did the relationship with Mr. Porter end?

25 A. In December, two years ago.

1 Q. About --

2 A. November, two years ago.

3 Q. Okay. Ms. Shirley, I want to start with
4 talking about that time frame of November 2015. Where
5 were you living back then?

6 A. I was living at Eagles Peak in Fischer, Texas.

7 Q. And who were you living with there?

8 A. Gerard Nance.

9 Q. And, Ms. Shirley, were you and the defendant,
10 Mr. Porter, together at that point in time?

11 A. No.

12 Q. Was there an incident that occurred that caused
13 law enforcement to respond to Mr. Nance's home?

14 A. Yes.

15 Q. How did that incident unfold?

16 A. The day before the police came, I was getting
17 wood because it was raining and it was very cold. I was
18 going to start a fire. And Mr. Porter came strolling up
19 and demanded that he stay. I told him that he could not
20 stay. It was the day after Thanksgiving. He came in
21 anyway, went straight in and fell asleep.

22 Q. Did you know that he was coming over that day?

23 A. No.

24 Q. You said that he went to sleep. What did you
25 do?

1 A. I told Gerry that he was there and that I
2 didn't want him there and -- I call him Gerry. Gerry
3 didn't want him there as well. He said maybe if he
4 sleeps a little, we'll have him leave in the morning, so
5 he slept.

6 Q. Okay. What did you do next?

7 A. I slept in the living room, came back into my
8 room that next morning, sat down beside him -- or rather
9 kind of laid near him and told him that we were leaving
10 and that he could not stay there.

11 Q. And when you say we were leaving, who was
12 leaving?

13 A. Gerry and I.

14 Q. And when you told the defendant this, what did
15 he say or do?

16 A. At first he ignored me. And then when I asked
17 him again -- or told him rather, he grabbed me and
18 started punching me in my head.

19 Q. How did he grab you?

20 A. He grabbed me by my hair. And I was laying --
21 sort of sitting up rather and he kind of straddled
22 across me, grabbed me by my hair and started punching
23 me, dragging me off the bed.

24 Q. So what happened next?

25 A. He dragged me into the hallway where I was

1 screaming, put his arm around me, started trying to
2 choke me and continued to punch me in my head.

3 Q. When you say that he had his arm around you,
4 where on your body did he have his arm?

5 A. He was trying to put it around my neck.

6 Q. Okay. And I see you motioning. Just for the
7 record, that's kind of in a chokehold motion?

8 A. Yes.

9 Q. Okay. What did you do when he had his arm
10 around your neck?

11 A. Well, I was struggling and swaying back and
12 forth. He continued to punch me in my head. And then
13 when he finally got me in a stranglehold, the only thing
14 I could do was bite him -- nip him rather.

15 Q. After you bit him, what happened?

16 A. He let go, but he continued to punch.

17 Q. When you say punching, where on your body was
18 he punching you?

19 A. In my head, mostly on this side.

20 Q. What side would that be, ma'am?

21 A. On my right side.

22 Q. You said you were in the hall and you were
23 screaming. What happened next?

24 A. Gerry came out of his room and said, hey, cut
25 it out. Stop it. Gerry is kind of a hippy kind of guy,

1 so he stopped rather -- well, slowed down rather.

2 Q. Okay. What did you do next?

3 A. I just kind of got away from him, went behind
4 Gerry, was crying.

5 Q. Where did Mr. Porter go?

6 A. He was in the hallway standing kind of in a
7 bowed position.

8 Q. So after y'all had separated, what did y'all
9 do?

10 A. Gerry was talking to him and said --

11 MR. MILLAN: Objection, hearsay.

12 Q. (BY MS. DOYER) Ms. Shirley, don't tell me
13 anything that Gerry was saying, just tell me what did
14 y'all do next.

15 A. Can you say that again?

16 Q. Sure. After the fight had separated, what did
17 you guys do next?

18 A. I stood in the hallway while Gerry talked with
19 Mr. Porter.

20 Q. After Gerry had talked to Mr. Porter, what did
21 you do?

22 A. I went into the bathroom. I was getting the
23 hair off -- clumps of hair coming out, hair coming out.
24 I washed my face, washed my -- the -- the blood off my
25 hair.

1 Q. You say you were washing your hair. What had
2 happened to your hair?

3 A. Oh, I guess he was pulling my hair out.

4 Q. Was -- was Mr. Porter pulling your hair during
5 this altercation?

6 A. Yes.

7 Q. While you were in the bathroom and you did all
8 of this, what happened after you were done in the
9 bathroom?

10 A. He went back into the bedroom and laid down.

11 Q. When you say "he," who would that be?

12 A. Mr. Porter.

13 Q. What happened next?

14 A. Gerry left the room and then he said, are you
15 coming back in here?

16 MR. MILLAN: Objection, hearsay.

17 THE COURT: Just don't relate anything
18 that anybody else said.

19 Sustained.

20 A. I was instructed to come back into the room.

21 Q. (BY MS. DOYER) Okay. Back into which room?

22 A. My bedroom, which is across from the bathroom.

23 Q. Who told you to come back into the bedroom?

24 A. Mr. Porter.

25 Q. Okay. When you went back into the bedroom,

1 what happened?

2 A. That's when I laid down.

3 Q. And why did you lay down?

4 A. I was told to.

5 Q. Who told you to lay down?

6 A. Mr. Porter.

7 Q. Okay. Georganne, were you afraid of Derek at
8 this point?

9 A. Yes, I was.

10 Q. Why did you lay down with him?

11 A. Because I figured he might jump up and do
12 something worse.

13 Q. Now, what do you remember happening next after
14 you had laid down with him?

15 A. After he laid down, I looked at him. When he
16 appeared to be asleep, I started to get up and put my
17 shoes on.

18 Q. And then what happened?

19 A. I heard a police officer and I whispered, I'm
20 in here.

21 Q. What did you do next?

22 A. I went out into the hallway.

23 Q. Did you see the police officer?

24 A. Yes, I did.

25 Q. What did -- what happened when you saw the

1 police officer?

2 A. He asked me my name. He asked me where
3 Mr. Porter was.

4 Q. Did you direct him to where Mr. Porter was?

5 A. Yes, I did.

6 Q. Then what did you do?

7 A. He asked me to step aside. And the officer
8 swayed me to the living away from where the bedroom was.

9 Q. What did you see happen after you had been
10 separated from Mr. Porter?

11 A. I was standing by the fireplace. There was a
12 Foosball table between the hallway and the living room.
13 I saw Mr. Porter come out of the bedroom. Two officers
14 were in the living room and Mr. Porter started to run
15 and one officer hit the Foosball table. And at that
16 point, I just kind of went out of the house and out the
17 front door.

18 Q. Now, Ms. Shirley, this may sound like kind of a
19 ridiculous question. When Derek was hitting you in the
20 head, punching you in the head, did you feel pain?

21 A. Yes, I did.

22 Q. When he was pulling your hair, did that cause
23 you pain?

24 A. Yes, it did.

25 Q. When he had you in the chokehold, did that

1 cause you pain?

2 A. Yes, it did.

3 Q. Specifically, do you have any pre-existing
4 conditions to your neck?

5 A. Do I what?

6 Q. Do you have a pre-existing neck injury?

7 A. Yes, I do.

8 Q. What's the nature of that injury?

9 A. I have a rotated (sic.) disc. I was in a car
10 accident.

11 Q. Had you ever communicated this to Mr. Porter?

12 A. Can you repeat that?

13 Q. Did Mr. Porter know this?

14 A. Yes, he did.

15 MS. DOYER: May I approach the witness,
16 Your Honor?

17 THE COURT: Yes, ma'am.

18 Q. (BY MS. DOYER) Ms. Shirley, I'm going to show
19 you what I've marked as State's Exhibits 1 through 6.
20 Have you had the opportunity to review these before
21 testifying here today?

22 A. Yes, I have.

23 Q. And what are these?

24 A. They are bruising -- beginning of bruising.

25 Q. And specific -- just more generally, what are

1 the documents I'm showing you?

2 A. They are photos of me and injuries.

3 Q. And who took these photos?

4 A. One of the officers.

5 Q. Do these photos fairly and accurately represent
6 how you appeared on that day?

7 A. Yes.

8 MS. DOYER: State offers State's Exhibits
9 1 through 6.

10 MR. MILLAN: No objection.

11 THE COURT: They're admitted.

12 MS. DOYER: Permission to publish,
13 Your Honor?

14 THE COURT: Yes, ma'am.

15 Q. (BY MS. DOYER) Ms. Shirley, I'm going to walk
16 through these. I might have a question about a photo; I
17 might not.

18 Okay. So looking here at State's Exhibit
19 1 -- and who are we looking at?

20 A. Me.

21 Q. And State's Exhibit 2, what is that?

22 A. My ear.

23 Q. In that photo can you describe for the jury
24 where some of the injuries are?

25 A. On the outer of the earlobe and on the inner

1 side of the earlobe, the center.

2 Q. For the record, would that be this red portion?

3 A. That entire area and on the outside.

4 Q. And the outside of your ear?

5 A. At the lobe here, too.

6 Q. At the lobe down here?

7 A. Yes.

8 Q. So all of these marks, Ms. Shirley, that are in
9 State's Exhibit 2, were those marks there before Derek
10 Porter struck you?

11 A. No.

12 Q. Now, looking at State's Exhibit 3, it's more
13 difficult to see on the overhead, but what's depicted
14 here?

15 A. In the center here is where he choked me.

16 Q. State's Exhibit 4?

17 A. Right in the crease of my ear and behind my
18 ear --

19 Q. So for the record --

20 A. -- into my hairline.

21 Q. So this portion here that appears to be
22 bruising are petechiae?

23 A. Also on the crease of my ear.

24 Q. Up here?

25 A. Yes.

1 Q. So just behind the upper earlobe. And then
2 State's Exhibits 5 and 6, why did officers take photos
3 of these portions of your hair?

4 A. I had large lumps and some bruising occurring.

5 Q. Ms. Shirley, that night did you want to press
6 charges on Mr. Porter?

7 A. I did and I didn't.

8 Q. Can you tell the jury a little bit about why
9 you did not?

10 A. I did not -- I didn't want any future problems
11 because it was not the first incident.

12 Q. You say it wasn't the first incident. I want
13 to kind of walk backwards. Was there an incident in
14 September of 2015 in Hays County that officers responded
15 to?

16 A. Yes.

17 Q. Can you describe for the jury what happened
18 that night?

19 A. He would not leave. I asked him continually to
20 leave. He started telling me about some girls that he
21 was seeing. And I said, I really don't care; maybe I'll
22 find somebody of my own. And he came up the stairs,
23 started punching me and started kicking me, drug me down
24 the stairs. Mr. Rein, who I was taking care of, asked
25 him to stop and to leave. Mr. Rein is a senior citizen.

1 He just went back into his room.

2 We ended up in the kitchen where he threw
3 several items at me and started kicking me in my
4 kidneys. And my neighbor -- at one point I got to the
5 front door where Mr. Porter drug me back inside,
6 continued to punch me in my head and kick me in my
7 kidneys. My neighbor saw and came to my aid.

8 Q. That neighbor that you're referring to, what
9 was her name?

10 A. I can't recall her name.

11 Q. Does Melissa --

12 A. Melissa, I think -- Melissa.

13 Q. That night does law enforcement respond?

14 A. Yes.

15 Q. Did you have any kind of lingering injuries or
16 conditions after the kicking in the stomach?

17 A. Yes, I was peeing blood.

18 Q. Did you go see a doctor for that?

19 A. No.

20 Q. Why not?

21 A. Because I couldn't get out of bed. I was
22 upstairs and we didn't have transportation. Mr. Porter
23 took my keys, my -- my phone as well as my wallet.

24 Q. Prior to the incident in September of 2015, was
25 there another incident in December of 2014 and --

1 MR. MILLAN: Your Honor, may I approach?

2 THE COURT: You may.

3 (At the bench, on the record)

4 MR. MILLAN: Your Honor, I'm concerned
5 that we're getting far afield of the initial allegations
6 and to -- you know, for -- this is 404(b) that we're
7 talking about, things that are essentially propensity
8 evidence. I'm concerned that we're getting --

9 THE COURT: How is it admissible at this
10 time?

11 MS. DOYER: Under 38.371, that new
12 provision with regards to the history of the
13 relationship. And it all goes to his intent to assault
14 her. I think it's pretty clear from the voir dire what
15 they're going with because of intent to assault her, his
16 motive, his knowledge, lack of mistake or accident.

17 MR. MILLAN: Well, Judge, if that's the
18 case, I'm -- I'm at this point going to inform the Court
19 that I think that she's putting herself up to
20 potentially who is the primary aggressor. And arrests
21 have been made against her and --

22 MS. DOYER: How so?

23 THE COURT: If it goes to the relationship
24 of the parties, it goes -- it probably would go both
25 ways, would it not?

1 MS. DOYER: There are certain predicates
2 that have to be laid for what Mr. Millan is discussing.

3 MR. MILLAN: It seems that the State is
4 really trying to go one way on this.

5 MS. DOYER: No. I have the law.

6 THE COURT: We're going to follow the
7 rules on that regardless of which way either of you are
8 going.

9 MR. MILLAN: I think we might need to
10 flesh this out outside the presence of the jury,
11 Your Honor.

12 THE COURT: What's the number you're
13 saying this is in?

14 MS. DOYER: 38.371.

15 THE COURT: 371.

16 (At the bench, concluded)

17 THE COURT: Ladies and gentlemen, I'm
18 probably going to have to send you out so we can take up
19 some matters which I was unaware of until now just
20 outside your presence. We'll try to get back to you as
21 soon as possible.

22 (Jury leaves courtroom)

23 THE COURT: I'm not real sure that this
24 particular provision, in effect, says a whole lot
25 because it says subject to the rules of evidence or

1 other applicable laws that -- that each party may offer
2 testimony or other evidence of all relevant facts and
3 circumstances that would assist the trier of fact in
4 determining whether the actor committed the offense
5 described by subsection A, which is the offense for
6 which he's on trial; correct?

7 MS. DOYER: Yes, sir.

8 THE COURT: So what predicate information
9 are you referring to me? It seems like it just refers
10 to the rules of evidence.

11 MS. DOYER: So 38.371 is just saying that
12 the nature of the relationship would be admissible and
13 then it's subject to the rules of evidence. And so
14 under 404 we would be offering it under motive, intent,
15 knowledge, absence of mistake or lack of accident.

16 MR. MILLAN: He hasn't even testified,
17 Your Honor. They're throwing it out there. I would
18 understand that if it was the -- something that was
19 meant to rebut something that he said, but they're just
20 throwing it out there and assuming what his motive,
21 intent, knowledge is before he even has an opportunity
22 to testify. Those grounds under 404(b) would only be to
23 impeach the -- the defendant if he was testifying.

24 MS. DOYER: That's not accurate.

25 THE COURT: Well, I mean, that -- this is

1 probably going to be a stair-step approach. I think
2 under the -- you know, under the rules -- I mean, even
3 in voir dire you can open a door, so to speak. But if
4 you're going to go into it, they're obviously going to
5 be entitled to cross-examine.

6 MR. MILLAN: And, Your Honor, not only do
7 I think that the -- if -- I think if they want to get
8 into relationships in general, if that's where this
9 thing is going, because I'm -- what I'm -- if we're
10 talking about doors getting opened here, I mean, she's
11 in custody right now for a very serious offense -- two
12 very serious offenses, one of which was an aggravated
13 assault and -- which ties into -- could potentially be a
14 defensive theory in this case.

15 MS. DOYER: It could not actually because
16 when we're talking about the nature of their
17 relationship, which is clear --

18 THE COURT: We're talking about this
19 relationship.

20 MS. DOYER: Yes, sir. You know the law.
21 And, you know, as far as she's got a pending charge,
22 there has to be a nexus. And how could you possibly
23 show something that happened two weeks ago could in any
24 way be related to Mr. Porter's apprehension.

25 MR. MILLAN: Well, depending on how she

1 responds to certain questions.

2 THE COURT: I don't know what may or may
3 not be. I think that this statute plainly says that
4 each party may offer testimony that's relevant,
5 including -- I'm skipping over a few portions here, but
6 it's -- it's regarding the nature of the relationship.
7 That's the specific purpose for this statute being here.

8 However, it does plainly relate you back
9 to and says, subject to the rules of evidence and such
10 that -- I think the door can be opened, but let's --
11 right now let's not just go ad nauseam -- or let me just
12 put it this way. The more you go into the details of
13 that, I think the more the door is opened for the
14 defendant to be able to respond and to cross-examine at
15 this stage of the trial.

16 Now, on redirect, depending upon the
17 cross, I don't know. But this statute does specifically
18 preclude the presentation of character evidence that
19 otherwise would not be admissible, so --

20 MR. MILLAN: That's exactly what I'm
21 saying, Judge. I mean, they're trying to bring it in as
22 propensity evidence.

23 MS. DOYER: That's not what I'm trying to
24 do. I've articulated the exceptions.

25 THE COURT: No, no. I'm talking more

1 about something that happened two weeks ago against
2 somebody else unless there's somehow some --

3 MS. DOYER: That would be an attempt to
4 introduce the --

5 THE COURT: Some relevance.

6 MS. DOYER: -- character evidence.

7 THE COURT: Y'all know what the evidence
8 is; I don't. But is there something that you would --
9 while the jury is out just because -- like I said, I
10 wasn't aware of this issue. I don't want the jury being
11 treated like yo-yos.

12 MR. MILLAN: Well, she was arrested for
13 assaulting him as well.

14 MS. DOYER: That charge was dismissed.

15 MR. MILLAN: I understand that, Judge, but
16 she's talking about things that are un --

17 MS. DOYER: Okay. Hold on. Mr. Porter's
18 on trial for assault. We're talking about the nature of
19 the relationship and 404 exceptions. I have articulated
20 exceptions.

21 MR. MILLAN: You've already --

22 MS. DOYER: If you're --

23 MR. MILLAN: -- said that you're
24 anticipating --

25 MS. DOYER: Can I please finish?

1 THE COURT: Why don't you just let me
2 interject. Number one, I've already said that you
3 can -- I think you can bring out the facts of this case.
4 But the door is going to be opened if -- if there was
5 something between -- the relationship of the parties,
6 whether it was prosecuted or not, I think you can go
7 into it.

8 MS. DOYER: And that's what I would like
9 to talk about outside the presence of the jury then is
10 that before we can get into -- that would be improper
11 impeachment with a specific instance of conduct because
12 38.371 is still subject to the rules of evidence. So
13 what is the exception under which we're bringing this
14 assault that was dismissed against Derek Porter?

15 THE COURT: Well, I think if you're
16 opening the door, it's --

17 MS. DOYER: That's not an exception.

18 MR. MILLAN: Intent, knowledge, absence of
19 mistake, she's not -- you know, this isn't a one-way
20 deal.

21 THE COURT: I think if they have a
22 good-faith basis for the question -- I think if
23 there's -- if it's mutual combat --

24 MS. DOYER: Mutual combat is not a
25 defense.

1 THE COURT: I understand, but it's about
2 the relationship of the parties.

3 MR. MILLAN: And self-defense is a
4 defense.

5 MS. DOYER: Let me --

6 THE COURT: That's part of what I'm
7 saying, is if there's a good-faith basis for it -- I
8 mean, unless we're going to have a mini trial here while
9 the jury is out -- I mean, please --

10 MR. MILLAN: I wasn't anticipating they
11 were going to be using 38.371. I guess I probably
12 should have and had case law ready for you. I mean, if
13 you want to go this route, I would rather us have a mini
14 trial, have each party brief the issue and then we have
15 a hearing before we bring the jury back out.

16 MS. DOYER: You were aware of it. I
17 provided you with 404 and 38.371 notice. I'm going to
18 move on for the purposes of right now. I think it will
19 be opened soon enough.

20 THE COURT: Okay.

21 All right. Bring them back in.

22 (Jury enters courtroom)

23 THE COURT: Okay. Everybody can be
24 seated.

25 Q. (BY MS. DOYER) Ms. Shirley -- can you hear me?

1 A. Yes.

2 Q. Ms. Shirley, after law enforcement responded
3 that night, have you gotten back together with or had
4 any other contact with Mr. Porter?

5 A. No.

6 Q. Do you see Mr. Porter here in the courtroom
7 today?

8 A. Yes, I do.

9 Q. Could you please identify him by something that
10 he's wearing?

11 A. Blue shirt.

12 MS. DOYER: For the record, the witness
13 has identified the defendant, and I'll pass the witness.

14 CROSS-EXAMINATION

15 BY MR. MILLAN:

16 Q. Ms. Shirley, you said that you didn't have any
17 contact with Mr. Porter after that incident.

18 A. No.

19 Q. You didn't send him any letters?

20 A. No.

21 Q. Okay. Did you send any pictures to Mr. Porter?

22 A. No.

23 Q. Now, you testified that -- that you bit
24 Mr. Porter on the upper arm. Do you remember where on
25 the upper arm you bit him?

1 A. No, I do not.

2 Q. And you testified that you -- that you bit him
3 in self-defense because you were in a chokehold; is that
4 right?

5 A. Yes.

6 Q. So his arm was around your neck, yet you were
7 able to -- you were able to get his arm off of you and
8 bite it?

9 A. I think it was a nip.

10 Q. And you said you -- he punched you in the head.
11 How many times did you say he punched you in the head?

12 A. I'm not sure, repetitively.

13 Q. Was he punching you hard?

14 A. Yes.

15 Q. Full force?

16 A. I'm not sure what full force is for Mr. Porter.

17 Q. Okay. And you testified that he pulled you
18 into the hallway; is that right?

19 A. Yes.

20 Q. When he pulled you into the hallway, was Gerry
21 there?

22 A. No.

23 Q. Did Gerry witness anything that you recall?

24 A. No, not that I recall.

25 Q. Other than the injury or the -- or the bite on

1 the arm, did you notice any other injuries on Derek
2 after the incident?

3 A. No.

4 Q. Did you not see a gash mark on his elbow?

5 A. No.

6 Q. Do you know how the gash mark on his elbow
7 could have gotten there?

8 A. No.

9 Q. Did you hit him with a machete?

10 A. No.

11 Q. With a garden hoe?

12 A. No.

13 Q. Now, approximately how long before the police
14 arrived at the -- had everything calmed down?

15 A. Maybe four or five minutes.

16 Q. And at the point that the police came to the
17 house, did you hear them knocking on the front door?

18 A. No.

19 Q. You never heard anybody knock on the front
20 door?

21 A. No.

22 Q. Okay. Were you -- did you ever have to write a
23 statement about the incident?

24 A. Excuse me?

25 Q. Did you ever have to write a statement about

1 the incident?

2 A. I believe, yes.

3 MR. MILLAN: May I approach the witness,
4 Your Honor?

5 THE COURT: Yes, ma'am -- or yes, sir.

6 Q. (BY MR. MILLAN) Do you recognize this?

7 A. Yes, I do.

8 Q. And what is it?

9 A. It's my statement.

10 MR. MILLAN: I'm going to tender it to the
11 State to make sure there's no objection.

12 MS. DOYER: No objection.

13 Q. (BY MR. MILLAN) When is that statement dated?

14 A. November 30th, 2015.

15 Q. Now, in this statement did you ever state
16 that --

17 MS. DOYER: Objection. Calls for hearsay.

18 Q. (BY MR. MILLAN) Did you tell the police that
19 on --

20 MS. DOYER: Objection. Calls for hearsay.

21 Q. (BY MR. MILLAN) In this statement you had an
22 opportunity to tell the police that you were assaulted,
23 didn't you?

24 A. Can you repeat that?

25 Q. In this statement you had an opportunity to

1 tell the police that you were assaulted; is that
2 correct?

3 A. I don't understand the question.

4 Q. In this statement you had the opportunity to
5 tell --

6 A. In my written statement, yes.

7 Q. -- in your written statement what had happened
8 to you?

9 A. Yes.

10 Q. Okay. Were you looking to move from Eagles
11 Peak at that time period?

12 A. Yes.

13 Q. And where were you planning on moving?

14 A. Ruidoso, New Mexico.

15 Q. Now, how much longer were you planning on
16 staying in that location?

17 A. I wasn't certain.

18 Q. Approximately how long from then were you
19 planning on moving to New Mexico?

20 A. Maybe a few months.

21 Q. So were you hoping to stay in Gerry's house for
22 a few months?

23 A. Yes, in the area.

24 MR. MILLAN: Pass the witness.

25

JOSEPH LORETT - JUNE 5, 2017
Direct Examination by Ms. Kilday

REDIRECT EXAMINATION

BY MS. DOYER:

Q. Ms. Shirley, that statement form that Mr. Millan showed you, did you have a chance to look at it?

A. Briefly.

Q. Why didn't you want to fully disclose what took place that night?

A. I didn't want any problems and our future -- our previous attempts on statements failed miserably. I mean, nothing was accomplished.

MS. DOYER: Pass the witness.

MR. MILLAN: No further questions.

MS. DOYER: May this witness be excused?

MR. MILLAN: Subject to re-call,
Your Honor.

THE COURT: You can step down.

MS. KILDAY: State calls Joseph Lorette.

THE COURT: Come right up here, please, sir. How are you doing. Let me get you to raise your right hand.

(Witness sworn)

THE COURT: Thank you. Have a seat and just get pretty close up there to that microphone.

JOSEPH LORETT - JUNE 5, 2017
Direct Examination by Ms. Kilday

1 JOSEPH LORETT,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. KILDAY:

5 Q. Good afternoon.

6 A. Afternoon.

7 Q. Please introduce yourself to the jury.

8 A. Ma'am?

9 Q. Will you please introduce yourself to the jury.

10 A. I'm Joe Lorette.

11 Q. Mr. Lorette, where do you work?

12 A. I work for the Austin Police Department.

13 Q. How long have you worked there?

14 A. Just over 20 years.

15 Q. And more importantly, when -- what county do
16 you reside in?

17 A. I reside in Comal County.

18 Q. All right. So do you remember an incident that
19 occurred November 30th of 2015?

20 A. I do.

21 Q. What do you remember about that day?

22 A. I was going -- I was on my street going down
23 the hill, coming to the stop sign at Eagles Peak. I
24 seen two police officers chasing a man down the street.
25 Being a police officer, I couldn't just watch. And so I

JOSEPH LORETT - JUNE 5, 2017
Direct Examination by Ms. Kilday

1 pulled up -- I was in a truck already. I pulled up to
2 cut him off. He turned and run back west. And then I
3 obviously went west with him.

4 When he turned to go back to what would be
5 north, I jumped out of the truck and ran and caught him
6 and held him there until the police officers showed up
7 and took custody of him.

8 Q. That day were you wearing the same uniform
9 you're wearing today?

10 A. No, ma'am. I was in civilian clothes.

11 Q. You just jumped in to help?

12 A. Correct.

13 Q. Did you get a chance to look at the gentleman
14 that you tackled on that day?

15 A. I did.

16 Q. Do you recognize him here in the courtroom?

17 A. I do.

18 Q. Would you please identify him and a piece of
19 clothing he's wearing?

20 A. He's wearing a light blue shirt, white male,
21 thin, looks much cleaner today.

22 Q. And you held on to him until the Comal County
23 sheriff's deputies were able to catch up?

24 A. I did.

25 MS. KILDAY: Pass the witness.

JOSEPH LORETT - JUNE 5, 2017
Cross-Examination by Mr. Millan

CROSS-EXAMINATION

BY MR. MILLAN:

Q. Good afternoon.

A. How are you doing, sir?

Q. Officer Lorette, question, do you think when you tackled the defendant, do you remember whether he -- whether or not he had any injuries on his -- on his person? Did you see any injuries on him?

A. I did not.

Q. Do you think that you -- your tackling caused any severe injuries?

A. No, I don't.

Q. Okay. I mean, how -- when you tackled him, how did you tackle him?

A. I actually went up behind him. He stumbled and we went to the ground. I got him and I held him in a wristlock until they got there.

Q. Did it seem like he fell in a severe fashion to cause any deep injuries or cuts?

A. I don't think so. I could be wrong. It's real rocky. Where we live, it's all rock. I don't remember seeing any blood or anything --

Q. Okay.

A. -- major. Of course, I don't know where the injury was, if it was under his pants or -- or I

GABRIEL SEPEDA - JUNE 5, 2017
Direct Examination by Ms. Doyer

1 couldn't tell you.

2 Q. Okay. Fair enough.

3 MR. MILLAN: Pass the witness.

4 MS. KILDAY: No further questions.

5 THE COURT: Thank you. You can step down.
6 Appreciate it.

7 THE WITNESS: Yes, sir.

8 MS. DOYER: State calls Deputy Gabriel
9 Sepeda.

10 Just for formality, Your Honor, may this
11 witness be released from the subpoena?

12 MR. MILLAN: I'm not planning on calling
13 him again.

14 THE COURT: Yes, he may be released.

15 Let me get you to raise your right hand,
16 please, sir.

17 (Witness sworn)

18 THE COURT: Thank you. And if you'll get
19 pretty close to that microphone.

20 GABRIEL SEPEDA,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. DOYER:

24 Q. Deputy Sepeda, could you please state your name
25 for the record.

GABRIEL SEPEDA - JUNE 5, 2017
Direct Examination by Ms. Doyer

1 A. Gabriel Sepeda.

2 Q. And, Deputy Sepeda, how are you presently
3 employed?

4 A. I'm a deputy with the Comal County Sheriff's
5 Office.

6 Q. And how long have you been with the Comal
7 County Sheriff's Office?

8 A. A total of 12 years.

9 Q. You mentioned that you're a deputy. Have you
10 held any other positions with the sheriff's office?

11 A. Yes, ma'am. I was a jailer for seven years.

12 Q. Did you have to go to a special academy to
13 become a jailer?

14 A. We have an in-house academy put on by the
15 sheriff's office.

16 Q. And do you have to go to additional training to
17 become a peace officer or a deputy?

18 A. Yes, ma'am.

19 Q. Have you attended that training?

20 A. Yes.

21 Q. Do you currently hold a peace officer
22 certification?

23 A. I do.

24 Q. What level?

25 A. Advanced.

GABRIEL SEPEDA - JUNE 5, 2017
Direct Examination by Ms. Doyer

1 Q. Deputy Sepeda, were you working on November
2 30th, 2015?

3 A. Yes, ma'am.

4 Q. And in what capacity were you working?

5 A. I was assigned to our traffic enforcement.

6 Q. Did you respond to a call at 150 Eagles Peak in
7 Canyon Lake that night --

8 A. Yes, ma'am.

9 Q. -- or I guess that morning?

10 A. Yes, ma'am.

11 Q. Where is that located generally?

12 A. It is off of FM 32 up near Canyon Lake High
13 School.

14 Q. Is that in Comal County?

15 A. Yes, ma'am.

16 Q. When you arrived at that location, what did you
17 do?

18 A. When I arrived on location, I -- I -- I met
19 with an individual who had come walking down from one of
20 the side roads to the property.

21 Q. And were you able to identify that individual?

22 A. Yes, ma'am.

23 Q. Who was that person?

24 A. Gerard Nance.

25 Q. Without going into anything that was said to

1 you, after you met with Mr. Nance, what did you do?

2 A. I spoke with my partner Deputy McClure who was
3 on scene with me and we made our way to the main house.

4 Q. Okay. When you went to the main house,
5 generally what was your understanding of why you were
6 out there? What was the nature of the call?

7 A. We were dispatched out there for a disturbance.

8 Q. Okay. So when you went to the main house, what
9 did you do?

10 A. We went to the main house and -- and knocked on
11 what was left of a front door and announced our presence
12 as deputies calling out to the occupants in the house to
13 see if anybody would come out and make contact with us.

14 Q. You said what was left of a front door. Can
15 you describe kind of the -- the home or the layout of
16 the home?

17 A. The home is set -- it's kind of a square house
18 with a -- almost like kind of a trailer attached to the
19 side of it. The front doors are what used to be a
20 French door, but there's only one door left. Like the
21 stationary to the French door -- the stationary door is
22 still there. The open door is -- was off the hinges.

23 Q. Okay. So what did y'all do when you got up
24 there?

25 A. I knocked on the door that was left, announced

1 our presence, the sheriff's office, and was calling out
2 to the -- whoever was in the house.

3 Q. Anybody respond to you?

4 A. No.

5 Q. Okay. So what did you do?

6 A. Deputy McClure went back and asked Gerard if he
7 was the owner of the house. He said he was and he gave
8 us consent to go in and see if we could make contact
9 with who he said was in the house.

10 Q. Okay. So did you go inside the home?

11 A. Yes, ma'am.

12 Q. Describe what happened when you went inside the
13 home.

14 A. We walked into that front door. You walk in.
15 There's a big open living room with a small dining room
16 attached to it. Immediately to the left is a -- a door
17 with another curtain. We went in through that. There's
18 a kitchen. To the left of the kitchen is another
19 doorway with a curtain. There's a small hallway. In
20 that hallway there's two bedrooms, a bathroom, and --
21 and that's where we made contact with whoever was in the
22 house.

23 Q. So walk me through. When you get into the
24 house, what pathway do you take?

25 A. When we go into the house, we walk towards --

1 into the living room through the left door into the
2 kitchen. As we walk into the kitchen, we hear stuff
3 going on. We hear loud music going on. Where we hear
4 the music coming from is to the left of the kitchen. We
5 go through that door. It's a hallway.

6 Once we get into that hallway, the music
7 is louder. We start announcing ourselves again,
8 sheriff's office, calling out. Somebody responds to us.
9 We have them come out and that's who we made contact
10 with.

11 Q. You said that somebody responded to you. Was
12 this person male or female?

13 A. Female.

14 Q. Were you later able to identify this
15 individual?

16 A. Yes, ma'am.

17 Q. And how -- who was that?

18 A. Georganne Shirley.

19 Q. You said that she came out. Could you describe
20 her demeanor when she came out?

21 A. When we called her name, initially she had
22 answered from the bedroom. I called out her name. She
23 answered. She said, who is it? I said, sheriff's
24 office. I asked her who was in there with her.

25 At that time she came rushing out of

1 bedroom, kind of not running, but hurriedly walking.
2 She walked up towards me. She made contact with me.
3 She got within about a foot of me, looked kind of
4 scared, kind of nervous and she started whispering
5 that --

6 MR. MILLAN: Objection, hearsay.

7 THE COURT: Sustained. Try not to refer
8 to any matters that you were told.

9 THE WITNESS: Yes, sir.

10 Q. (BY MS. DOYER) So she came out. And just
11 describe how her emotional state was.

12 A. She seemed just scared, nervous.

13 Q. After you made contact with her, what did you
14 do?

15 A. We had her wait in the living room and went to
16 go make contact with the person in the bedroom.

17 Q. Okay. When you went into the bedroom, what did
18 you see?

19 A. We saw a bed, a dresser. There was a male
20 individual laying underneath the covers.

21 Q. Okay. Did you attempt to make contact with
22 that individual?

23 A. Yes, ma'am.

24 Q. Okay. How did you do that?

25 A. We called him by his name.

1 Q. Did he respond?

2 A. I -- he -- he sat up. He was laying under the
3 covers. We called his name. He bolted up, asked what
4 was going on. I told him that's what we're there to
5 find out.

6 Q. What did he do next?

7 A. At that point I asked him to come and talk to
8 us. He got out of the bed, walked around the bed. As
9 he was walking towards me, he -- he bent down to tie his
10 tennis shoe that he was wearing under the covers.

11 Q. Was that unusual to you?

12 A. Yeah, a little bit. He was completely dressed.
13 He had a hoodie on, sweat pants and tennis shoes.

14 Q. Okay. You mentioned that he tied his shoe.
15 What did y'all do next?

16 A. At that point I asked him if he had any ID. He
17 said no. I had him walk into the kitchen where me and
18 McClure were so we could talk to him about what was
19 going on.

20 As we were walking in the kitchen, I asked
21 him to keep his hands out of his pockets. Walking into
22 the kitchen, there's a counter. In front of the counter
23 was a chair. I asked him -- I told him, hey, come sit
24 on this chair so we can talk to you. He didn't respond.
25 I told him again, hey, have a seat in this chair. Again

1 he didn't respond, just started to -- continually
2 walking towards the kitchen door leading into the living
3 room. Once he got to the threshold of the door, he took
4 off running.

5 Q. Now, you said that you and your partner McClure
6 were there. Where was Deputy McClure?

7 A. Deputy McClure was standing by the counter
8 right next to the chair.

9 Q. So how was the defendant able to exit the home?

10 A. He ran out through the kitchen, out through the
11 front door and out through the open door that -- where
12 the door was missing, he went out that door and onto the
13 porch.

14 Q. Had y'all announced yourselves as peace
15 officers --

16 A. Yes.

17 Q. -- in his presence?

18 A. Yes.

19 Q. And were you wearing a uniform much like what
20 you're wearing here today?

21 A. Yes, ma'am.

22 Q. Was Deputy McClure also wearing a uniform?

23 A. Yes.

24 Q. Now, after he took off running, what did you
25 and your partner do?

1 A. We -- we chased after him. Once we got out of
2 the house onto the porch, he -- we took a right towards
3 Eagles Peak, went down the embankment that is right next
4 to the house. It's about an eight-foot embankment, made
5 it down to the street, continued down Eagles Peak
6 towards Sunset View.

7 Once we got to the intersection, the
8 individual we were chasing took a left onto Sunset View.
9 And that's when the other witness from Austin PD, an
10 off-duty officer, in his truck assisted us in -- in
11 catching Derek.

12 Q. Okay. So what did the -- the off-duty officer
13 do to assist y'all?

14 A. Once we were approaching Sunset View and the
15 individual took a left, he sped through the
16 intersection, drove towards the individual, kind of cut
17 him off with his truck, jumped out and then chased him
18 into another empty lot there at the corner of Eagles
19 Peak and Sunset View. He ended up tackling him, held
20 him there until we got to the corner. And once we got
21 there, we restrained him in handcuffs.

22 Q. After he was restrained, who was primarily
23 tasked with just keeping track of him or custody of him?

24 A. I had him secured while I had McClure go get
25 his vehicle from the top of the house to bring it closer

1 so we could put him in the vehicle.

2 Q. And then after McClure had brought his vehicle,
3 where was the defendant placed?

4 A. We stood him up, walked him to the street on
5 Eagles Peak where the vehicle was, placed him against
6 the car to pat him down to make sure he didn't have any
7 weapons on him. While we were doing this, he got angry
8 and started banging his head on the passenger window.

9 Q. What did y'all do due to his behavior?

10 A. Told him to stop. Told him to calm down.
11 Tried to push him against the car to keep him from
12 banging. He was -- obviously wasn't going to stop so we
13 placed him down on the ground on his stomach, told him
14 to calm down and stop resisting. At that point he was
15 able to calm down.

16 Q. At this point where was he placed?

17 A. After he calmed down, said he was going to calm
18 down, said he was going to being okay, cooperative, we
19 stood him back up and we were able to sit him in the
20 back of McClure's patrol car.

21 Q. Once he was secured in McClure's patrol
22 vehicle, what did you do as part of your investigation?

23 A. Once he was secured, McClure took custody of
24 him, called for EMS because of the -- from banging his
25 head on the window, he caused a small laceration on his

1 forehead. McClure called EMS to come check him out. At
2 that point I went back to the house to finish talking to
3 Georganne.

4 Q. Now, when you were talking to Georganne --
5 don't tell me anything that she said, but can you
6 describe what her demeanor was like when she was
7 discussing the events with you?

8 A. She still seemed a little shaken, a little
9 nervous, kind of had a shaky voice, not as scared as she
10 was at the beginning, a little more relieved, but still
11 nervous.

12 Q. Did you do anything to document -- or did you
13 assess her for injuries?

14 A. From what -- from talking to her, I could see
15 that she had a couple of red marks on her neck at first.
16 At that point I had a female officer, Deputy Peavey,
17 take her inside just to make sure she didn't have
18 anything else elsewhere.

19 Q. And what did you do to document the injuries
20 that were visible?

21 A. I took photos of what I could see on her head
22 and neck.

23 Q. Did you also feel her head for any injuries?

24 A. Yes.

25 Q. Did you feel any?

1 A. There was a small little bump that was starting
2 to -- to come up on her head.

3 Q. Are those photos still up there, Deputy, with
4 you?

5 A. No, ma'am.

6 Q. Looking at what's already been admitted as
7 State's Exhibits 1 through 6, are those the photos that
8 you took of Ms. Shirley that morning?

9 A. Yes.

10 Q. Okay. Now, you said that there was some
11 redness on her neck. Was that able to be fully captured
12 in the photos?

13 A. The picture that I took of her full frontal on
14 her face from the little bit of distance, you can see it
15 on her neck, the close-up.

16 Q. Let me go back to this one. State's Exhibit 1,
17 is that what you're referring to?

18 A. Yes, ma'am. If you look right there above her
19 little rope necklace or cord -- cord necklace, you can
20 see the two little red marks on the -- what would be the
21 left side of her neck.

22 Q. Okay.

23 MS. DOYER: Pass the witness.

24 CROSS-EXAMINATION

25 BY MR. MILLAN:

1 Q. Good afternoon, Officer Sepeda. I want to take
2 you to when you first arrived at the Eagles Peak
3 address. You were knocking on the door for quite a
4 while, weren't you?

5 A. No more than five minutes.

6 Q. Okay. You were knocking pretty hard, weren't
7 you?

8 A. We knocked very loud, yes.

9 Q. Could you hear music from where you were
10 knocking?

11 A. From where I was knocking, you could hear faint
12 music, yeah.

13 Q. Okay. And was -- and you said that there was
14 only one door. The other door was open; right?

15 A. Yes.

16 Q. So -- and it was a pretty cold day you say?

17 A. I -- I don't recall the temperature.

18 Q. Okay.

19 A. It was November.

20 Q. After Thanksgiving?

21 A. I think it was after Thanksgiving.

22 Q. Right. And there was -- there was a house that
23 had doors open; is that right -- I mean, open doors to
24 it; right?

25 A. Yes.

1 Q. So if it was cold outside, it was probably
2 pretty cold inside as well; right? You don't recall?

3 A. No, sir.

4 Q. Okay. How far was the bedroom from the front
5 door?

6 A. We had to go through two rooms.

7 Q. Okay. And were there doors in between you and
8 that room or was it just -- just like sheets?

9 A. Just sheets.

10 Q. Okay. And did it seem odd to you that somebody
11 wouldn't have been able to hear the knocking?

12 A. No. I just -- like I said, I -- we didn't know
13 what was going on. We didn't know if a disturbance was
14 actively going on. We didn't know what was going on,
15 so --

16 Q. Do you think you could have heard the knocking
17 from that bedroom where you were knocking?

18 MS. DOYER: Objection. Asked and
19 answered, calls for speculation.

20 THE COURT: Overruled.

21 Q. (BY MR. MILLAN) Do you know?

22 A. As loud as I knocked, yeah, probably.

23 Q. Okay. Now, you talked about documenting the
24 injuries on Ms. Shirley. Did you document the injuries
25 on Derek Porter?

1 A. No, I didn't.

2 Q. Okay. Do you know if anybody did?

3 A. I -- I couldn't tell you.

4 MR. MILLAN: Okay. May I approach the
5 witness, Your Honor?

6 THE COURT: Yes, sir.

7 Q. (BY MR. MILLAN) Let me show you your report.

8 And I want to take you to page two, number 11. I want
9 you to just read it to yourself.

10 A. Okay.

11 Q. So according to your report, you forced -- the
12 group of officers that were there notified EMS regarding
13 the injuries on -- on Mr. Porter; is that right?

14 A. Yes, sir.

15 Q. Okay. And it was in relation to a cut on his
16 arm; is that right?

17 A. Yes.

18 Q. I also want to take you to number 14. I want
19 you to read number 14.

20 A. Okay. Okay.

21 Q. And in number 14 you state that the only
22 injuries that you saw were the injuries on the arm.
23 Those are the only injuries that you could document in
24 terms of the biting, is that right, and that you didn't
25 notice any other signs of him being assaulted?

1 A. Correct.

2 Q. So --

3 A. Correct, other than the -- the cut that he said
4 he had on his arm.

5 Q. But you're saying here that -- read number 14
6 again and read the last sentence.

7 A. Uh-huh. I say I didn't notice any other signs
8 of him being assaulted.

9 Q. Other than the bite mark; right?

10 A. Other than what he -- other than the cut that
11 he told me he had and the bite mark that he had on his
12 arm.

13 Q. So he had a cut on his arm and a bite mark on
14 his upper arm. Were they on the same arm?

15 A. No, sir.

16 Q. Different arms?

17 A. Yes.

18 Q. And you didn't document those injuries?

19 A. I didn't.

20 Q. And you -- you were not aware of whether they
21 were documented by any other officer?

22 A. Not that I'm aware of.

23 Q. Do you think that's important evidence?

24 A. Could be.

25 Q. As part of the investigation, do you ever

1 remember it being brought up among the officers whether
2 it should be --

3 MS. DOYER: Objection. Objection.
4 Hearsay.

5 THE COURT: All right. I don't -- I don't
6 know.

7 MS. DOYER: I can tell.

8 THE COURT: I can't.

9 Q. (BY MR. MILLAN) Did you ever have any
10 conversation with any of the other officers about
11 documenting the injuries --

12 MS. DOYER: Objection.

13 Q. (BY MR. MILLAN) -- of Mr. Porter?

14 MS. DOYER: Objection, hearsay.

15 THE COURT: Overruled.

16 A. No, I didn't.

17 MR. MILLAN: Pass the witness.

18 MS. DOYER: I have nothing further for
19 this witness.

20 THE COURT: Okay. You can step down.

21 MS. DOYER: May this witness be released?

22 THE COURT: Yes.

23 MS. DOYER: Your Honor, as far as
24 scheduling, we moved a lot quicker than I anticipated
25 this afternoon. I have one available for tomorrow

1 morning.

2 THE COURT: Okay. Do need him back
3 potentially?

4 MR. MILLAN: No, not Sepeda, Your Honor.

5 THE COURT: Okay. Very good.

6 Ladies and gentlemen, we're going to go
7 ahead and break for the day. Please do be mindful of
8 the admonitions that you received in that set of written
9 instructions. We have heard a couple of the locations.

10 If by chance you have to go by any of
11 those, if you can avoid them, take a different route to
12 go home, a different route than you normally do. Please
13 don't do any drive-bys, no Google Earth, no nothing of
14 that nature. Just be mindful of your admonitions and
15 we'll see you in the morning about 9:00 and we'll try to
16 get started. Thank you.

17 (Jury leaves courtroom)

18 THE COURT: Just for scheduling purposes
19 so that we don't -- I don't know who the next witness
20 is, but whoever that may be, is there any reasonable
21 anticipation that we would have any hearings necessary
22 outside the presence of the jury?

23 MS. DOYER: Probably, yes.

24 MR. MILLAN: Who is next?

25 MS. DOYER: Witnesses from Hays County.

1 THE COURT: Who from Hays County?

2 MS. DOYER: The neighbor who called 911
3 when she ran across the street and asked for help, and
4 then an officer who responded to a different assault on
5 her in Hays County.

6 MR. MILLAN: There will definitely be a
7 hearing outside the presence of the jury.

8 MS. DOYER: I think by now the cross is
9 clearly put into play in this whole self-defense issue.
10 If there's any evidence of it is one thing, but now I'm
11 offering these things to rebut the defensive theory.

12 THE COURT: Yes, sir, any response?

13 MR. MILLAN: If I may review the
14 applicable case law over the evening and get back to you
15 tomorrow morning.

16 THE COURT: Okay. Well, then, I guess
17 we're going to need to be here probably about 8:15 or so
18 to try to -- I just don't want the jury unnecessarily
19 cooling their heels back there forever --

20 MR. MILLAN: I understand, Judge.

21 THE COURT: -- but I think -- just because
22 I don't know how the evidence and the witnesses may
23 proceed, generally speaking -- that's why I typically
24 say that if there is some good-faith expectation and
25 belief and it's not just a pure fishing expedition, I

1 typically allow cross-examination questions that would
2 explore matters so as to prevent us from unnecessarily
3 having to call witnesses back to the stand or take
4 people out of order or whatever and so -- but that also
5 goes both ways, that if they have a reasonable belief
6 based upon the voir dire and some of the
7 cross-examination questions that it appears that there's
8 an open door, it's probably permissible in general to do
9 that.

10 But again, I think it should be a
11 stair-step approach such that we're not simply adding
12 character evidence in here. And if they're then -- if
13 that evidence is being brought in, again, you can
14 cross-examine. But if you want to bring me some case
15 law or something --

16 MR. MILLAN: I have homework tonight,
17 Judge.

18 THE COURT: Okay. Let's just -- do you
19 think we're going to have to have testimony proffered or
20 presented outside the presence of the jury --

21 MR. MILLAN: Judge, I'll tell you right
22 now I --

23 THE COURT: -- or is it just looking at
24 the case law?

25 MR. MILLAN: I want to look at the case

1 law because if I do call -- I may be calling Georganne
2 Shirley back for some purposes which may -- after all of
3 the testimony has been heard -- have opened the door --
4 that door may have been opened to everything at that
5 point, which is fine.

6 If -- I don't know how the State is
7 planning on bringing Georganne back into this, if
8 they're planning on bringing in that testimony or
9 whether they're planning on doing it through other
10 witnesses. I guess it depends on how the State proceeds
11 with their witnesses from here on out and how I'm going
12 to deal with it.

13 THE COURT: I don't know either, so --

14 MR. MILLAN: Right.

15 THE COURT: All right. We'll just see
16 y'all right at about 8:15 in the morning then.

17 (Proceedings adjourned)

18

19

20

21

22

23

24

25

1 STATE OF TEXAS

2 COUNTY OF COMAL

3
4 I, Cindy Cummings, Official Court Reporter in and
5 for the 433rd District Court of Comal, State of Texas,
6 do hereby certify that the above and foregoing contains
7 a true and correct transcription of all portions of
8 evidence and other proceedings requested in writing by
9 counsel for the parties to be included in this volume of
10 the Reporter's Record in the above-styled and numbered
11 cause, all of which occurred in open court or in
12 chambers and were reported by me.

13 GIVEN UNDER MY HAND, on this the 9th day of August,
14 2017.

15 /s/ Cindy Cummings

16 Cindy Cummings, Texas CSR 3210
17 Official Court Reporter
18 433 Judicial District Court
19 150 N. Seguin Street
20 Suite 317
21 New Braunfels, Texas 78130
22 Tel 830-221-1279
23 Fax 830-608-2030
24 Expiration: 12/31/17
25

CINDY CUMMINGS, CSR
OFFICIAL COURT REPORTER - 433RD DISTRICT COURT
TEL. (830) 221-1279 FAX (830) 608-2030